BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Verizon North Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996.	))))))	Case No. 08-198-TP-ARB

ARBITRATION AWARD

The Commission, considering the petition, the evidence of record, post-hearing briefs, and otherwise being fully advised, hereby issues its arbitration award.

APPEARANCES:

Cahill, Gordon & Reindel LLP by Ms. Cherie R. Kiser and Ms. Angela F. Collins, 1990 K Street, N.W., Suite 950, Washington, D.C. 20006, and Ms. Rebecca Ballesteros, 1601 Dry Creek Drive, Longemont, Colorado 80503, on behalf of Intrado Communications, Inc.

Thompson Hine LLP by Mr. Thomas E. Lodge, South High Street, Suite 1700, Columbus, Ohio 43215, and Mr. Darrell Townsley, 205 North Michigan Avenue, Suite 700, Chicago, Illinois 60601, on behalf of Verizon North, Inc.

I. BACKGROUND

Under Section 252(b)(1) of the Telecommunications Act of 1996 (the Act),[1] if parties are unable to reach an agreement on the terms and conditions for interconnection, a requesting carrier may petition a state commission to arbitrate any issues which remain unresolved, despite voluntary negotiation under Section 252(a) of the Act.

On August 22, 2007, the Commission adopted carrier-to-carrier rules in Case No. 06-1344-TP-ORD, *In the Matter of the Establishment of Carrier-to-Carrier Rules.*[2] Under Rule 4901:1-7-09(G)(1), Ohio Administrative Code (O.A.C.) an internal arbitration panel is assigned to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.

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1 The Act is codified at 47 U.S.C. Sec. 151 et seq.

2 The carrier-to-carrier rules became effective November 30, 2007.

II. HISTORY OF THE PROCEEDING

Rule 4901:1-7-09(A), O.A.C., specifies that any party to the negotiation of an interconnection agreement may petition for arbitration of open issues between 135 and 160 days after the date on which a local exchange carrier (LEC) receives a request for negotiation. According to the Petition for Arbitration filed by Intrado Communications, Inc. (Intrado), by letter submitted on May 18, 2007, Intrado formally requested Verizon North Inc. (Verizon) to commence negotiations for an interconnection agreement. The parties agreed to a number of extensions, finally agreeing to an arbitration petition filing deadline of March 5, 2008. Intrado timely filed a petition on March 5, 2008, to arbitrate the terms and conditions of interconnection with Verizon pursuant to Section 252 of the Act. In its petition, Intrado presented 35 issues for arbitration. On March 31, 2008, Verizon filed its response to the petition for arbitration as well as a motion to dismiss or stay Intrado's petition for arbitration. On April 8, 2008, Verizon filed a letter stating that the parties had agreed to stay the arbitration in order to allow for further negotiations with the objective of eliminating some issues from the arbitration and to more clearly define the issues that remain. Additionally, Verizon indicated that, in light of the parties' agreement to continue to negotiate, the company was withdrawing its motion to dismiss.

Consistent with the proposed schedule filed by the parties on August 5, 2008, the attorney examiner issued an entry scheduling a hearing commencing on January 13, 2009, and establishing a briefing schedule. Additionally, a status conference was scheduled for September 25, 2008, for the purpose of addressing any remaining procedural issues prior to the arbitration hearing.

On December 30, 2008, the parties filed arbitration packages containing exhibits and the written testimony of their respective witnesses. On the same date, the parties filed a joint matrix (Joint Issues Matrix) setting forth the issues to be arbitrated and the parties' respective positions regarding the identified issues. The arbitration hearing was held on January 13, 2009. Intrado presented the testimony of the following two witnesses: (1) Robert Currier and (2) Thomas Hicks. Embarq presented the testimony of (1) Peter D'Amico and (2) Nicholas Sannelli.

Initial briefs were filed by the parties on February 13, 2009. Reply briefs were filed by the parties on March 6, 2009.

III. ISSUES FOR ARBITRATION

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

Intrado proposes language that would require Verizon to transport its end users' emergency calls destined for Intrado's public safety answering point (PSAP) customers to POIs on Intrado's network, which would be Intrado's selective router/access ports (Intrado Ex. 2, at 12). Intrado claims that this is the same method of physical interconnection as defined by Verizon when it serves in the capacity of the 9-1-1/E9-1-1 service provider. Intrado avers that the POI arrangement that it proposes is the industry-accepted practice for 9-1-1 traffic and results in the most efficient network architecture and highest degree of reliability. Therefore, Intrado claims its proposed language is simply seeking to mirror the type of interconnection arrangements that Verizon and other incumbent local exchange carrier (ILECs) have determined to be the most efficient and effective for the termination of emergency calls (*Id.* at 13).

Intrado explains that where Verizon serves as the 9-1-1 service provider, it has routinely designated the location of its selective routing access ports as the POI for telecommunications carriers seeking to gain access to the 9-1-1 services that Verizon provides to Ohio PSAPs. This POI, Intrado avers, is in addition to the POI designated by competitive local exchange carriers (CLECs) for the exchange of other Section 251(c) traffic. Intrado further explains that CLECs generally deliver their customers' 9-1-1 calls over dedicated 9-1-1 trunks to Verizon's selective routers. Therefore, Intrado opines that Verizon recognizes the importance of 9-1-1 calls being delivered directly to the selective router serving the PSAP (*Id.* at 14).

Intrado avers that it is simply seeking physical connectivity between its network and Verizon's network that is similar to what Verizon has implemented with other carriers for the termination of 9-1-1 calls to Verizon PSAP customers (*Id.* at 16). Intrado contends that because similar arrangements have been successfully used in the past, a rebuttable presumption is created that such method is technically feasible for substantially similar network architecture. Intrado posits that Verizon bears the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any particular point (*Id.* at 16). Further, Intrado submits that effective competition requires that the interconnection arrangements that Verizon provides to Intrado must be equal in quality to the interconnection arrangements that Verizon provides to itself and to other carriers, unless technical feasibility issues are present (*Id.* at 15). In support of its position, Intrado avers that Section 251(c)(2) requires ILECs to provide interconnection that is at least equal in type, quality, and price to the interconnection arrangements the ILEC provides to itself and others (*Id.* at 16). There is no reason, Intrado claims, for 9-1-1 calls to be delivered to any tandem other than the relevant selective router that is connected to the PSAP serving the geographic area in which the 9-1-1 call was originated (*Id.* at 15).

Further, Intrado requests that Verizon establish two geographically diverse POIs on Intrado's selective routers when Intrado is the 9-1-1 service provider to the PSAP. Intrado contends that, at a minimum, there must be two geographically diverse POIs in order to ensure the provision of a robust and fault tolerant 9-1-1 infrastructure. Intrado further

claims that diverse routing of 9-1-1 traffic is consistent with industry guidelines and recommendations (*Id.* at 18).

Verizon contends that Intrado's proposed language relative to Issue 1 is overly broad and would require Verizon to establish at least two POIs anywhere on Intrado's network, either within or outside Ohio (Verizon Initial Br., Matrix at 1, 2). Verizon notes that Intrado has indicated that it plans to place the initial POIs in Ohio in Columbus and Westchester (Tr. at 155, 156), neither of which is in Verizon's service territory (Verizon Initial Br. at 6). Verizon argues that forcing it to interconnect on Intrado's network, at any point that Intrado designates, unjustly burdens it to bear all the costs of transporting traffic to Intrado's POI, no matter how distant the location of the POI (Verizon Initial Br. at 7).

Verizon argues that Intrado's proposed language is directly contrary to federal law in that Section 251(c) states that each ILEC has the duty to provide interconnection with the LEC network at any technically feasible point within the carrier's network (*Id.* at 9 citing 47 U.S.C. §251(c)(2)(B)). Verizon avers that Ohio's interconnection rule (Rule 4901:1-7-06(A)(5), O.A.C.) correctly reflects the federal requirement that each ILEC provide interconnection to requesting telephone companies at any technically feasible point within its network (*Id.* at 9). Verizon argues that this obligation applies to all traffic, including 9-1-1, exchanged between an ILEC and an interconnecting carrier (*Id.* at 9).

In support of its position, Verizon avers that Intrado openly recognizes that the 1996 Act requires the POI to be within the ILEC's network (*Id.* at 10, citing Intrado Ex. 2, at 20). Additionally, Verizon asserts that Intrado cannot require Verizon to hand off traffic at a location different than where Intrado hands off its traffic to Verizon. In support of its position, Verizon contends that, consistent with the FCC's rules, POIs "link two networks for purpose of the mutual exchange of traffic." Thus, Verizon claims that, while Intrado may select a technically feasible location as the POI on Verizon's network, Verizon must be permitted to hand off its traffic to Intrado at the same location (*Id.* at 10 citing 47 C.F.R. §51.5).

Verizon also rejects Intrado's "equal-in-quality" argument inasmuch as it is based on Section 251(c)(2)(C) and 47 C.F.R. §51.305(a)(3), which address service quality and technical design criteria, rather than the POI placement, which is addressed in Section 251(c)(2)(B) and 47 C.F.R. §51.305(a)(3) (*Id.* at 13, 14). Verizon avers that Intrado's argument that it is only asking to mirror the same kind of arrangements Verizon uses with CLECs is premised on Intrado's incorrect legal position that Intrado is entitled to establish POIs on its own network. Verizon contends that CLECs bring their traffic to Verizon's network because it is required by the 1996 Act, the FCC's rules, and the Commission's rules. Verizon submits that there is no reciprocal obligation for ILECs to take their traffic to CLEC networks, and the Commission cannot create one based on Intrado's misguided policy arguments (*Id.* at 14).

Finally, Verizon responds that, in contrast to ILECs in Case Nos. 07-1216-TP-ARB (07-1216), *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection, Rates, Terms, and Conditions and Related Arrangements With United Telephone Company of Ohio, dba Embarq and United Telephone Company of Indiana dba Embarq*, pursuant to Section 252(b) of the Telecommunications Act of 1996, and 08-537-TP-ARB (08-537), *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Verizon has neither agreed to take its traffic to Intrado's network, nor has it offered interconnection pursuant to Section 251(a), as was agreed to by Embarq. Verizon argues that, to the extent that the Commission does not dismiss this arbitration request, it must analyze Intrado's interconnection proposals with respect to their compliance with Section 251(c). Verizon submits that neither Verizon nor Intrado has sought Section 251(a) interconnection and, therefore, the Commission cannot order Section 251(a) terms that neither party has proposed (*Id.* at 22).

ISSUE 1 ARBITRATION AWARD

With regard to the location of the POI , the Commission has previously determined that, consistent with the FCC's finding in *In the Matter of the Revision of the Commissions Rules to Ensure Compatibility with Enhanced 9-1-1 Emergency System, Request of King County*, 17 FCC Rcd. 14789, ¶1 (2002), and with certain geographic limitations, the POI for 9-1-1 traffic should be at the selective router of the E9-1-1 service provider that serves the caller's designated PSAP. See Case Nos. 08-537, Arbitration Award, October 8, 2008; 07-1216, Arbitration Award, September 24, 2008; and 07-1280-TP-ARB (07-1280), *In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the 1996 Act, to Establish an Interconnection Agreement with AT&T Ohio*, Arbitration Award, March 4, 2009. Consistent with its prior decisions, the Commission determines that Verizon should deliver E9-1-1 calls, destined for PSAP customers of Intrado, to an Intrado selective router serving that PSAP located within Verizon's service territory. In addition, Intrado should deliver its end users' 9-1-1 calls, destined for PSAP customers of Verizon, to a Verizon selective router serving that PSAP. This finding is also consistent with our previous determinations that interconnection arrangements between an ILEC and a CLEC for the purpose of terminating CLEC 9-1-1 traffic to a PSAP served by the ILEC are subject to Section 251(c) of the 1996 Act and that interconnection arrangements whereby Intrado is the 9-1-1 service provider to the PSAP are subject to Section 251(a) of the 1996 Act. See 07-1216, Arbitration Award, at 8; 08-537, Arbitration Award, at 22; 07-1280, Arbitration Award, at 16.

In regard to the number of POIs that must be established for the exchange of end users' 9-1-1 calls, the Commission has previously determined that for 9-1-1 traffic there is no requirement to establish multiple POIs on a selective router for the delivery of end users' 9-1-1 calls destined for a PSAP serviced by that selective router. The Commission, therefore, rejected requiring the establishment of multiple POIs on the 9-1-1 service

provider's selective router (*Id.*). Finding no new evidence to overturn these prior decisions, the Commission again finds that establishing multiple POIs on the 9-1-1 service provider's selective router is not required at this time. Notwithstanding this determination, the parties remain free to mutually agree to additional POIs at any technically feasible point.

Based on the above findings, the Commission directs the parties to adopt language consistent with our determinations with respect to 9-1-1 Attach. Sections 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1, and glossary Sections 2.63 and 2.67. Finally, the Commission notes that neither party directly addresses, in Issue 1, the aspect of whether calls will be delivered with automatic number identification (ANI). While it would appear intuitive that an E9-1-1 call would be delivered with ANI, and Verizon's testimony appears to assume it will be (Verizon Ex. 1, at 20), the fact that Verizon is disputing various points within the language where "with ANI' is specified raises some concern. As is discussed in the Award for Issue 7, an E9-1-1 call is incomplete without the ANI information, as it is part of the information the 9-1-1 caller wishes to be delivered (even though the delivery process is transparent). Therefore, the parties are instructed to include the phrase "with ANI" where it is disputed in 9-1-1 Attach. Sections 1.3.2.1 and 1.3.4.

Issue 2 Should the parties implement inter-selective router trunking and what terms and conditions should govern the exchange of 9-1-1/E9-1-1 calls between the parties?

Intrado proposed the following language:

<u>9-1-1 Attach. §1.4.1</u>

Where the controlling 9-1-1 authority for a PSAP for which Verizon is the 9-1-1/E9-1-1 service provider and the controlling 9-1-1 authority for a PSAP for which Intrado is the 9-1-1/E9-1-1 service provider agree to transfer 9-1-1/E9-1-1 calls from one PSAP to the other PSAP and each controlling 9-1-1 authority requests its 9-1-1/E9-1-1 service provider to establish arrangements for each 9-1-1/E9-1-1 call transfers, each party shall establish the trunking and routing arrangements necessary to accomplish such inter-PSAP transfer using the interconnection arrangements established by the parties 9-11 Attach. §1.4.2 pursuant to section 1.3 above.

<u>9-1-1 Attach. §1.4.2</u>

For the transfer of 9-1-1/E9-1-1 class from one PSAP to another PSAP as described in section 1.4.1 above, each party, at its own expense, shall provide transport between the 9-1-1 tandem selective router serving its PSAP and the

POI(s) established by the parties. Each party shall be responsible for maintaining the facilities on its respective side of the POI(s) for inter-9-1-1 tandem, selective router trunks.

9-1-1 Attach. §1.4.2.1

For transfers of 9-1-1/E9-1-1 calls destined for Intrado's PSAP customer, the parties shall exchange such 9-1-1/E9-1-1 calls at POI(s) established by the parties pursuant to section 1.3.2

9-1-1 Attach. §1.4.2.2

For transfers of 9-1-1/E9-1-1 calls destined for Verizon's PSAP customer, the parties shall exchange such 9-1-1/E9-1-1 calls at POI(s) established by the parties pursuant to section 1.3.1.

9-1-1 Attach. §1.4.4

The parties will maintain the appropriate inter-9-1-1 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 explains that inter-selective router trunking is trunking deployed between selective routers that allow 9-1-1 calls to be transferred between selective routers and, thus, between the PSAPs served by the selective routers (Intrado Ex. 2, at 22). Intrado contends that establishment of inter-selective router trunking, as it is requesting, will ensure that PSAPs are able to communicate seamlessly with each other and still receive access to essential ANI and automatic location identification (ALI) information. Intrado avers that Verizon must ensure that its network is interoperable with Intrado's network using the capabilities inherent in each 9-1-1 service provider's selective router and ALI database system. Intrado represents that this interoperability will enable call transfers to occur with the ANI and ALI associated with the emergency call remaining with the voice communication when a call is transferred from one 9-1-1 service provider to another. Intrado claims that failure to enable inter-selective router transfer capability requires PSAPs to transfer calls over the public switched telephone network (PSTN) to a local exchange line at the PSAP, and the caller's ANI and ALI is lost (*Id.* at 23).

Intrado contends that, other than public safety benefits, this Commission, in Case No. 07-1199-TP-ACE (07-1199), *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio,* specifically recognized that interconnection between 9-1-1 service providers is necessary to ensure transferability across county lines and call/data transferability between PSAPs. Intrado avers that Verizon has established inter-selective router trunking within its own network and has

established similar arrangements with other providers of 9-1-1 services in other states served by Verizon (Intrado Ex. 2, at 24). Intrado contends that its proposal would be best achieved using the same interconnection arrangements that the parties establish for their exchange of other 9-1-1 service traffic. Thus, Intrado explains that, for transfers of 9-1-1 calls destined for Intrado's PSAP customers, the parties would exchange that call at the POIs established by Verizon on Intrado's network. For transfers of 9-1-1 calls destined for Verizon's PSAP customers, the parties would exchange the calls at the POIs established by Intrado on the Verizon network. Intrado contends that, in the alternative, the parties could jointly provision two-way trunks between their networks and share the cost which could then be recovered from each party's PSAP customer (*Id.* at 25, 26). Intrado avers that it does not seek to implement call transfer arrangements without PSAP consent and points to language that it avers will not allow Intrado to force Verizon to implement inter-selective router trunking without input or consent (*Id.* at 26).

According to Intrado, its proposed language would also require each party to alert the other party when changes are made to dial plans that might affect PSAP call transfers. Intrado explains that dial plans are used to determine to which PSAP an emergency call transfer should be routed, based on the route number passed during the call transfers. Intrado claims that Verizon shares dial plan information with other providers of 9-1-1 services in states where it is not the sole provider of 9-1-1 service, and Intrado seeks the same information sharing arrangements that Verizon provides to other similarly situated providers (*Id.* at 27).

Verizon proposed the following italicized language with respect to Issue 2:

> <u>9-1-1 Attach. §1.4.1</u>
>
> Where the Controlling 9-1-1 Authority for a PSAP for which Verizon is the 9-1-1/E9-1-1 Service Provider and the Controlling 9-1-1 Authority for a PSAP for which Intrado Comm is the 9-1-1/E9-1-1 Service Provider agree to transfer 9-1-1/E9-1-1 Calls from one PSAP to the other PSAP and each Controlling 9-1-1 Authority requests its 9-1-1/E9-1-1 Service Provider to establish arrangements for such 9-1-1/E9-1-1 Call transfers, each Party shall *provide to the other Party, in accordance with this Agreement, but only to the extent required by Applicable Law, interconnection at any technically feasible Point(s) of Interconnection on Verizon's network in a [Local Access Transport Area] LATA, for the transmission and routing of 9-1-1/E9-1-1 Calls from a PSAP for which one Party is the 9-1-1/E9-1-1 Service Provider to a PSAP for which the other Party is the 9-1-1/E9-1-1 Service Provider. The technically feasible Point(s) of Interconnection on Verizon's network in a LATA shall be as described in Section 1.3.1, above*

The POI(s) established by the Parties at technically feasible Point(s) of Interconnection on Verizon's network in a LATA in accordance with the preceding paragraph of this Section 1.4.1 shall be located in the LATA where the PSAP for which Verizon is the 9-1-1/E9-1-1 Service Provider and to which or from which a 9-1-1/E9-1-1 Call is to be transferred is located. Verizon shall have no obligation, and may decline: (a) to transport 9-1-1/E 9-1-1 Calls from one LATA to another LATA; and, (b) to provide interLATA facilities or services to transport 9-1-1/E9-1-1 Calls.

9-1-1 Attach. §1.4.2

For the transfer of 9-1-1/E9-1-1 Calls from one PSAP to another PSAP as described in Section 1.4.1 above, each Party, at its own expense, shall provide transport between the PSAP *for which such Party is the 9-1-1/E9-1-1 Service Provider* and the POI(s) established by the Parties *at technically feasible Point(s) of Interconnection on Verizon's network in a LATA. If Intrado Comm obtains from Verizon transport between the PSAPs for which Intrado Comm is the 9-1-1/E9-1-1 Service Provider and the POI(s) established by the Parties at technically feasible Point(s) of Interconnection on Verizon's network in a LATA, Intrado Comm shall pay to Verizon the full Verizon rates and charges (as set out in Verizon's applicable Verizon Tariffs and this Agreement) for such transport and for any services, facilities and/or arrangements provided by Verizon for such transport (including, but not limited to, rates and charges for Verizon-provided Exchange Access services [such as entrance facilities, multiplexing and transport] and rates and charges for Collocation obtained by Intrado Comm from Verizon for interconnection of Intrado Comm's network with Verizon's network) Intrado Comm shall pay to Verizon the full Verizon rates and charges (as set out in Verizon's applicable Tariffs and this Agreement) for interconnection at the POI(s) established by the Parties at technically feasible Point(s) of Interconnection on Verizon's network in a LATA and for any services, facilities and/or arrangements provided by Verizon for such interconnection (including, but not limited to, rates and charges for Collocation obtained by Intrado Comm from Verizon for interconnection of Intrado Comm's network with Verizon's network). For the avoidance of any doubt, there shall be no reduction in any Verizon rates or charges because the transport, interconnection, services, facilities and/or arrangements are used to carry 9-1-1/E9-1-1 Calls delivered by Verizon to Intrado Comm.*

Verizon avers that it does not oppose inter-selective router trunking and that interconnection between Verizon and Intrado for all 9-1-1 calls can, and should, be accomplished by means of connecting PSAPs using inter-selective router trunks. Verizon, however, contends that the details of Intrado's specific inter-selective routing proposal are unacceptable for a number of reasons. First, Verizon claims, Intrado's inter-selective router trunking proposal assumes that Intrado may force Verizon to deliver 9-1-1 calls

being transferred from a Verizon-served PSAP to an Intrado-served PSAP at a POI on Intrado's network (Verizon Ex. 1, at 27).

Second, Verizon argues that because Intrado proposes to designate POIs on its own network when it serves a PSAP in a particular area, all of the inter-selective router trunking between Verizon's selective routers and Intrado's selective routers would be on Verizon's side of the POI. In other words, Verizon would have to pay for virtually all of the facilities necessary to deploy inter-selective router trunking (*Id.* at 28).

Third, Verizon claims that the PSAPs served by Verizon and Intrado must agree to transfer misdirected 9-1-1 calls between them before such transfers can occur. Verizon contends that the agreement between Verizon and Intrado cannot impose upon PSAPs specific interoperability provision without their consent. Verizon avers that, where PSAPs have agreed to transfer calls between themselves, Verizon will work with Intrado to establish arrangements for these transfers. Verizon contends that an interconnection agreement cannot purport to control the conduct of third parties or the services sold to them (*Id.* at 29).

Fourth, Verizon claims that Intrado's proposed language in support of its proposed call transfer methodology would require the parties to maintain inter-9-1-1-selective router dial plans. Verizon agrees that current dial plans are necessary to ensure proper transfer of calls and it is willing to provide this information to Intrado just as it does to other providers. However, Verizon argues that Intrado seeks an excessive level of dial-plan detail in the interconnection agreement that is not customary, appropriate, or workable (*Id.*).

Lastly, Verizon opines that inter-selective routing involves a peering arrangement between two carriers, each of which is a primary provider of 9-1-1 services to a PSAP in a different geographic area. This situation, Verizon contends, involves the cooperative efforts of the affected PSAP customers for the purposes of connecting two 9-1-1 networks without any involvement of the PSTN (*Id.* at 30). As such, Verizon avers, as this Commission has found, there is no basis on which to compel Section 251(c) interconnection (*Id.* at 30 citing 07-1216, Arbitration Award at 7, 8).

ISSUE 2 ARBITRATION AWARD

In the Commission's previous arbitration awards addressing this issue, the Commission determined that Section 251(a) of the Act is the applicable statute relative to the scenario in which Intrado and an ILEC each serve as primary providers of 9-1-1 service to different PSAPs, and transfer calls between each carrier's selective routers in order to properly route a 9-1-1 call (inter-selective call routing). The Commission has also concluded previously, as it does here, that it is appropriate to include terms and conditions for Section 251(a) arrangements in the parties' arbitrated interconnection

agreement. In 07-1199, the Commission stated that "each designated [competitive emergency service telecommunications carrier] CESTC shall interconnect with each adjacent countywide 9-1-1 system to ensure transferability across county lines" (07-1199, Finding and Order issued February 5, 2008, at 9). Additionally, the Commission required that each CESTC 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 provider (*Id.*). As this call transfer capability is effectuated via inter-selective router trunking, the Commission determined in 07-1216 that it has effectively required the availability of inter-selective router trunking between adjacent countywide 9-1-1 systems and between Intrado and other 9-1-1 carriers. Thus, the Commission concurred with Intrado that the interconnection agreement should contain the framework for interconnection and interoperability of the parties' 9-1-1 networks through inter-selective routing. The Commission sees no reason to deviate from this determination in this instance. While both parties and the Commission agree that PSAP input is important, the Commission agrees with Intrado that the interconnection agreement should contain the framework for establishing the interconnection and interoperability of the parties' networks in order to ensure that inter-selective router capabilities can be provisioned once requested by a Ohio county or PSAP.

However, the Commission finds, in this instance, that Intrado's proposed language for Section 1.4.2.1 and 1.4.2.2 is too prescriptive in that the use of the word "shall" would potentially rule out other methods of inter-selective call routing, including the parties' joint provision of two-way trunks between their networks, an alternative proposed by Intrado witness Hicks. The Commission further notes that the "established POI(s)" described in Intrado's proposed language in Sections 1.4.2.1 and 1.4.2.2 may in fact not exist. For example, if Intrado does not serve end users whose designated PSAP for 9-1-1 calls is a Verizon-served PSAP, then a POI would not exist on Intrado's network to serve this PSAP. Furthermore, if the Intrado-served PSAP was previously served by an ILEC other than Verizon and the PSAP does not serve Verizon end user customers, then a POI on Verizon's network would also not exist. Therefore, the Commission directs the parties to substitute the word "may" for "shall" in Sections 1.4.2.1 and 1.4.2.2 of the interconnection agreement.

The Commission notes that in our decision to include terms and conditions for inter-selective routing in our 07-1216 Award, the Commission did not exclude Embarq from receiving compensation for implementing PSAP-to-PSAP call transfers from either the PSAP or Intrado. Similarly, the Commission finds that our decision here to include inter-selective routing terms and conditions does not preclude Verizon from receiving compensation for implementing PSAP-to-PSAP call transfers.

Finally, with respect to the sharing of dial plan information, to the extent that Verizon is currently sharing dial plan information, the Commission directs the parties to

share dial plan information in a manner that is consistent with how Verizon currently shares dial plan information with other 9-1-1 carriers with which Verizon has inter-selective routing arrangements. The Commission, therefore, directs the parties to revise Section 1.4.4 to reflect the Commission's determination regarding the sharing of dial plan information.

Issue 3 : Should the forecasting provisions be reciprocal?

Intrado proposed the following language with respect to 9-1-1 Attach. §1.6.2

> Where the Parties have already established interconnection on a semi-annual basis each party shall submit a good faith forecast to the other party of the number of trunks that each party anticipates that the other party will need to provide during the ensuing two-year period for the exchange of traffic between Intrado Comm and Verizon. Both Parties' trunk forecast shall conform to the Verizon Trunk Forecast Guidelines as in effect at that time. Each Party also shall provide a new or revised traffic forecast that complies with the Verizon Trunk Forecast Guidelines when one party develops plan or becomes aware of information that will materially affect the Parties' interconnection.

Intrado maintains that, as co-carriers, each party should have reciprocal forecasting obligations (Joint Issues Matrix at 15, 16). In support of this, Intrado states that, given that the forecasts will be used to support the mutual exchange of traffic between the parties, there is no reason the forecasting obligation should not apply equally to both parties (Intrado Ex. 2, at 28, 29). Intrado indicates that it must have some indication from Verizon as to how many 9-1-1/E9-1-1 trunks will be required, in order to adequately groom its network (Intrado Initial Br. at 34).

Intrado further notes that Verizon is the current monopoly provider of 9-1-1/E9-1-1 services within its service territory, and concludes that Verizon is uniquely situated to judge how many 9-1-1/E9-1-1 calls are generally sent to a specific county or PSAP that may become Intrado's customer (Joint Issues Matrix at 15, 16). Intrado states that it needs some indication from Verizon as to how many 9-1-1/E-9-1-1 trunks will be required to support emergency calls between the parties' networks (Intrado Ex. 2, at 28) and that once the network is in place for any particular Intrado PSAP customer, only Verizon knows, based on its end user usage data, its end user demand for reaching the specific Intrado PSAP customer (Joint Issues Matrix at 15, 16). Intrado also maintains that it is limited in its ability to determine the actual demand for its services, as Intrado would be unaware of calls that were blocked due to trunk busy conditions on Verizon's network (Intrado Initial Br. at 35, 36). Intrado additionally maintains that it would be unable to know in advance of changes in Verizon's network that would affect trunk demands, which would limit its ability to have facilities ready when needed (Tr. 66).

Intrado states that other provisions of the interconnection agreement, specifically Section 1.1.5 of the 9-1-1 Attachment, will not provide the same information as the proposed trunk forecasts. In support of its position, Intrado notes that Verizon's standard contract language includes both the forecasting requirement and the on-request meeting requirement in Section 1.1.5 (Intrado Initial Br. at 35, 36). Intrado further notes that it has a pending CLEC certification, which it claims would make the inclusion of reciprocal forecasting language even more important in the future (Intrado Reply Br. at 14).

Verizon proposed the following language with respect to 9-1-1 Attach. §1.6.2

> Where the Parties have already established interconnection in a [local access and transport area] LATA, on a semi-annual basis, Intrado Com shall submit a good faith forecast to Verizon of the number of trunks that Intrado Comm anticipates that Verzion will need to provide during the ensuing two-year period for the exchange of traffic between Intrado Comm and Verizon. Intrado Comm's trunk forecast shall conform to the Verizon Trunk Forecast Guidelines as in effect at that time. Intrado Comm also shall provide a new or revised traffic forecast that complies with the Verizon Trunk Forecast Guidelines when Intrado Comm develops plans or becomes aware of information that will materially affect the Parties' interconnection.

Verizon states that Intrado's proposed forecasting reciprocity requirement in the 9-1-1 Attachment serves no useful purpose and imposes an unnecessary burden on Verizon and, thus, should not be included in the agreement (Verizon Ex. 1, at 30-32; Joint Issues Matrix at 15, 16).

Verizon maintains that Intrado, and not Verizon, will be in the best position to undertake forecasting. The number of trunks necessary for traffic flowing from Verizon to Intrado will depend on Intrado's success in the market, which is something Verizon cannot predict (Verizon Ex. 1, at 30-32). In addition, according to Intrado, to the extent that it enrolls PSAPs as customers, those PSAPs will have the best knowledge of call volumes from Verizon's serving area to the PSAP (*Id.*). Verizon further maintains that it will not be able to produce such forecasts with any accuracy, as the forecasts are dependent on knowledge that Verizon does not have, including the level of Intrado's potential success in the marketplace. Therefore, Verizon submits that requiring it to make these forecasts will "undermine" the proper sizing of the parties' networks (Verizon Reply Br. at 26). Finally, Verizon notes that the forecasting obligations already apply equally to both parties, pursuant to Section 1.1.5 of the 9-1-1 Attachment (*Id.*).

ISSUE 3 ARBITRATION AWARD

In light of the testimony at the hearing in this proceeding, it is surprising that the parties have been unable to resolve the issue here. The need of the parties to coordinate their facilities is both intuitively obvious and acknowledged by the parties. Equally obvious is the need for sharing each party's future expectations and plans to further that coordination.

At the hearing, Verizon's witness acknowledged that Intrado has similar needs for forecasting information as Verizon, and that Intrado will not know certain types of information, such as Verizon's network architecture and/or line losses to other competitors. Rather, the witness surmised that Intrado would be able to determine this information indirectly (Tr. 127, 128). The witness also indicated that Verizon would be amenable to meetings per §1.5.5 of the 9-1-1 Attachment to discuss trunk group information (*Id.* at 130, 131).

It seems unreasonable for Verizon to require of Intrado a regular form of reporting that Verizon considers an "unnecessary burden" if placed upon itself. It also seems unlikely that Verizon would wish to have to indirectly determine the other party's need for facilities, particularly given the literal life-and-death importance of 9-1-1 calls. Even if the parties cannot make forecasts based upon perfect knowledge, the parties sharing what knowledge they do have will serve to further the reliability of the 9-1-1 system. While Verizon maintains that the language in §1.5.5 of the 9-1-1 Attachment provides the ability to "work out these arrangements" (Verizon Reply Br. at 27 and footnote 20), the Commission is concerned that the meetings would be "on request by either Party." Absent knowledge of the other party's forecasts, it would be difficult to know whether such a meeting is required, leaving the parties with the need to request a meeting in order to determine whether there is a need to request a meeting.

Therefore, the Commission will require the trunk reporting to be reciprocal, as appears in Intrado's proposed language for §1.6.2 of the 9-1-1 Attachment. However, to eliminate any possible confusion, this conclusion is not intended to require the development of forecasts by either party specifically to meet this reciprocal requirement. Rather, in light of the fact that each party already develops trunk forecasts in the normal course of business, the Commission is simply requiring both parties to share the relevant parts of their forecasts. It should be further noted that, as this arbitration concerns an agreement that discusses exclusively the relationship between Verizon and Intrado as a CESTC, Intrado's certification as a CLEC and any related CLEC forecasts are not relevant in regard to this disputed issue.

Finally, while there is neither testimony nor briefing in support of the inclusion of the words "in a LATA" as proposed by Intrado for that same section, the Commission will

require its inclusion as well, as it appears a reasonable clarification and is consistent with the agreed upon language in §1.6.1.

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

Intrado proposed the following language with respect to 9-1-1 Attach. §1.5

> 1.5.1 When Intrado Comm becomes the 9-1-1/E-9-1-1 Service Provider for a PSAP to which Verizon End Users originate 9-1-1/E-9-1-1 Calls and for which additional interconnection arrangements between the Parties need to be established, Intrado Comm shall provide written notice to Verizon of the need to establish such interconnection *in such LATA* pursuant to this Agreement.
>
> 1.5.5 After receiving the notice provided in Section 1.5.1 above, the Parties shall work cooperatively to (a) designate a minimum of two (2) geographically diverse POIs to be established on Intrado Comm's network if such POIs have not already been established; agree on the intended interconnection activation date; *create* a forecast of trunking requirements; and provide such other information as each Party shall reasonably request n order to facilitate interconnection.
>
> 1.5.6 The interconnection activation date shall be mutually agreed to by the Parties Within ten (10) Business Days of Verizon's receipt of Intrado Comm's notice provided for in Section 1.5.1 above, Verizon and Intrado Comm shall confirm the POI(s) to be established on Intrado Comm's network and the mutually agreed upon the interconnection activation date for the new interconnection arrangements.
>
> 1.5.7 Prior to establishing the new interconnection arrangements, the Parties shall conduct a joint planning meeting ("Joint Planning Meeting"). At that Joint Planning Meeting, each Party shall provide to the other Party originating Centum Call Seconds (Hundred Call Seconds) information, and the Parties shall mutually agree on the appropriate initial number of trunks and the interface specifications at the POI(s).

Intrado contends that Verizon's proposed language will require Intrado to take certain steps when it seeks to initiate service in a LATA in which the parties are not already interconnected. Intrado explains that it has modified Verizon's proposed language to require Verizon to provide certain information to Intrado when Intrado is the 9-1-1 service provider (Intrado Ex. 2, at 32). This language includes the locations of two

POIs on Intrado's network to deliver Verizon end users' 9-1-1 calls to PSAPs served by Intrado (Joint Issues Matrix at 16).

Intrado contends that, as interconnected carriers, Verizon should be required to provide information to Intrado prior to physical interconnection. Intrado avers that both parties will need to exchange information about their networks to ensure that they implement a reliable, redundant, and diverse network (Intrado Ex. 2, at 32). Intrado contends that this information would include which POIs are to be established on Intrado's network and a forecast of trunking requirements. Intrado further contends that its proposed language recognizes that the parties will be operating as co-carriers and thus should exchange information prior to initiating interconnection. Intrado explains that it characterizes the parties as co-carriers because, due to the importance of 9-1-1 services, the parties will be required to work together to ensure that adequate 9-1-1 arrangements are implemented to support the mutual exchange of 9-1-1 traffic between the parties' networks (*Id.* at 33).

Verizon proposed the following language with respect to 9-1-1 Attach. §1.5

> 1.5.1 For each LATA in which Intrado Comm becomes the 9-1-1/E9-1-1 Service Provider for a PSAP to which Verizon End Users originate 9-1-1/E9-1-1 calls and in which the Parties are not already interconnected pursuant to this Agreement, Intrado Comm shall provide written notice to Verizon of the need to establish such interconnection in such LATA pursuant to this Agreement.
>
> 1.5.5 [T]he notice provided in Section 1.5.1 above, shall include (a) the proposed POI(s) to be established at technically feasible Point(s) of Interconnection on Verizon's network in the relevant LATA in accordance with this Agreement; (b) Intrado Comm's intended Interconnection activation date; (c) a forecast of Intrado Comm's trunking requirements; and (d) such other information as Verizon shall reasonably request in order to facilitate interconnection.
>
> 1.5.6 The interconnection activation date in the new LATA shall be mutually agreed to by the Parties after receipt by Verizon of all necessary information as indicated above. Within ten (10) Business Days of Verizon's receipt of Intrado Comm's notice provided for in Section 1.5.1 above, Verizon and Intrado Comm shall confirm the POI(s) to be established at technically feasible Point(s) of Interconnection on Verizon's network in the new LATA and the mutually agreed upon the interconnection activation date for the new LATA.

> 1.5.7 Prior to establishing interconnection in a LATA, the Parties shall conduct a joint planning meeting ("Joint Planning Meeting"). At that Joint Planning Meeting, each Party shall provide to the other Party originating Centum Call Seconds (Hundred Call Seconds) information, and the Parties shall mutually agree on the appropriate initial number of trunks and the interface specifications at the POI(s) to be established at technically feasible Point(s) of Interconnection on Verizon's network in a LATA.

Verizon contends that the language in dispute in Issue 4 is directly related to Issue 1 and whether Verizon can be forced to interconnect with Intrado at a POI on Intrado's network. Verizon avers that its proposed language correctly recognizes that, when Intrado signs up a new PSAP customer serving Verizon's end user customers, Intrado will need to establish interconnection on Verizon's network, and that certain steps need to be taken to initiate service at the POIs on Verizon's network (Verizon Ex. 1, at 33).

ISSUE 4 ARBITRATION AWARD

The Commission agrees with Verizon that this issue is directly related to Issue 1. In our Award for Issue 1, the Commission determined that, when Intrado is the 9-1-1 service provider to a PSAP serving Verizon end user 9-1-1 calls, Verizon is required to deliver its end users 9-1-1 traffic to a single POI on Intrado's selective router serving that PSAP within Verizon's service territory. Therefore, the Commission directs the parties to revise the language in dispute in Issue 4 to reflect these findings, including the mutual sharing of information regarding the location of the selective router prior to physical interconnection. The Commission agrees with Intrado that such information is necessary for both parties to perform appropriate engineering of their respective networks to ensure that adequate arrangements are in place between the parties to ensure the termination of 9-1-1 calls to the appropriate PSAP.

Issue 5 How should the Parties route 9-1-1/E9-1-1 calls to each other?

Intrado contends that its proposed language ensures that the parties are using the most efficient, most reliable traffic routing arrangements possible for the purpose of providing Ohio public safety entities with the benefits of a diverse and redundant network. Intrado explains that its proposed language has two main components – the trunking arrangements and the techniques necessary to efficiently route 9-1-1 calls between the parties' networks (Intrado Ex. 2, at 33). Intrado contends that it has proposed language requiring Verizon to implement certain minimum arrangements for routing 9-1-1 service traffic destined for Intrado PSAP customers, including multiple, dedicated, diversely routed 9-1-1 trunks. Intrado claims that Verizon has opposed undertaking these trunking activities when it terminates 9-1-1 service traffic on Intrado's network (*Id.*). Intrado claims that Verizon's template interconnection language imposes nearly identical

requirements on CLECs that seek to terminate 9-1-1 calls on Verizon's network (*Id.* at 34). Intrado avers that it would accept reciprocal language for those instances when Intrado terminates 9-1-1 service traffic on Verizon's network (*Id.* at 34, 35).

Intrado states that its language proposes the use of dedicated trunking from Verizon's end offices to deliver Verizon end users' 9-1-1 calls to Intrado's selective router when Intrado is the designated 9-1-1 service provider to the PSAP (*Id.* at 35). Intrado claims that, today, Verizon uses dedicated trunking from its end offices for 9-1-1 calls within its own network and requires CLECs to directly interconnect to the appropriate selective router and deliver only 9-1-1 traffic from their end users to the 9-1-1 selective router directly connected to the PSAP designated to serve that caller's location (*Id.* at 37). In support of this claim, Intrado points out that Verizon's template interconnection agreement requires any CLEC seeking to complete its end users' 9-1-1 calls to Verizon's PSAP customers to establish a minimum of two dedicated trunks to each Verizon selective router located in the CLEC's serving area. Intrado explains that these interconnection arrangements are in addition to interconnection arrangements established by CLECs for the exchange of "plain old telephone service" (POTS) traffic (*Id.* at 36). Intrado avers that it is not dictating how Verizon routes traffic on Verizon's side of the POI, but is simply seeking the same type of arrangement that Verizon imposes on other carriers when Verizon services the PSAP (*Id.* at 37). Intrado claims that, like Verizon's template interconnection agreement language, Intrado's proposed interconnection agreement language does not dictate how Verizon will transport its end users' 9-1-1 calls to Intrado, only that it do so over direct, dedicated trunks from its end offices without switching the 9-1-1 call at Verizon's selective router. Intrado contends that, because the arrangement proposed by Verizon does not utilize dedicated trunking from the end office to the selective router, unnecessary switching will be introduced to the call path. Intrado claims that switching Verizon originating office traffic through a Verizon selective router is unnecessary when Intrado has been designated to serve the 9-1-1 service provider and poses an increased risk of call failure before the 9-1-1 call is passed to Intrado (*Id.* 40, 41).

In support of its proposed language, Intrado avers that the use of dedicated trunks is technically feasible and that Verizon can perform any required sorting of 9-1-1 traffic at the originating office when the originating office is a digital or analog electronic switching system (*Id.* at 43). Intrado claims its proposal is supported by industry recommendations and guidelines, which call for identifiable end office trunk groups for default routing. Intrado contends that Verizon's proposal to use a common trunk group for all 9-1-1 service traffic destined for Intrado's network is inconsistent with the National Emergency Number Association (NENA) recommendations (*Id. at* 45).

Verizon claims that Intrado's proposed language would require Verizon to buy or build a minimum of two new dedicated 9-1-1 trunks from each end office in areas where Intrado is the designated 9-1-1 service provider to an unspecified number of POIs somewhere on Intrado's network. Verizon contends that Intrado's proposal for direct end

office trunking means that calls would no longer be aggregated at Verizon's selective router, which today sort calls to the appropriate PSAP. Verizon avers that, because Verizon's end offices do not have this call-sorting capability, some kind of new call-sorting method would have to be developed or deployed in those end offices (Verizon Ex. 1, at 35, 36). In situations where Intrado serves a PSAP, Verizon proposes to route calls from Verizon's customers to Intrado in the same way it routes calls to PSAPs today. Verizon explains that a 9-1-1 call from a Verizon end user would, therefore, travel to Verizon's selective router over Verizon's existing trunks and then the selective router would route the call to a POI on Verizon's network, from which Intrado will carry the call to its selective router (*Id.* at 36).

Verizon avers that Intrado's proposal for Verizon to install direct trunks from its end offices to POIs on Intrado's network results in Intrado inappropriately dictating how Verizon designs its own network for the routing of calls on Verizon's side of the POI. Verizon contends there is nothing that would justify one carrier dictating to another carrier the manner in which it transports traffic within its own network (*Id.* at 36, 37). Verizon further argues that Intrado's direct trunking proposal would dictate how other carriers design their network, by requiring them to also direct trunk to Intrado's network rather than routing their traffic through Verizon's selective routers, as most CLECs and wireless carriers do today (*Id.* at 37). Verizon claims the use of selective routers is efficient because it enables a company to aggregate and route calls to multiple PSAPs through a single switch. Conversely, Verizon contends, it is not efficient to build multiple trunks from multiple end offices to multiple selective routers, as Intrado's proposal would require (*Id.* at 45). Verizon avers that the ILEC alone is responsible for what happens on its side of the POI, just as the CLEC is responsible for what happens on its side of the POI (*Id.* at 47).

ISSUE 5 ARBITRATION AWARD

Pursuant to our award for Issue 1, discussed supra., and our previous arbitration awards involving Intrado, Intrado's selective router serving the caller's designated PSAP is considered the POI when Intrado is the service provider for a specified PSAP. With regard to the trunking arrangements used for the exchange of 9-1-1 traffic when Intrado is the designated provider relative to the specific PSAP, the Commission finds that, consistent with our previous arbitration awards in 08-537, 07-1216, and 07-1280, Verizon bears the cost and is generally entitled to establish routing for its 9-1-1 calls on its side of the POI.

The Commission notes that no new arguments relative to this issue have been presented in this proceeding other than those raised in the previous Intrado arbitrations. Therefore, consistent with our previous findings, Verizon is not required to establish direct trunking to Intrado's selective router(s) in those situations in which Intrado is the 9-1-1 service provider to the PSAP. Rather, Verizon will be allowed to engineer its network on

its side of the POI, including the use of its selective router(s), for the delivery of its 9-1-1 traffic to Intrado's selective router.

Issue 6 Should 9-1-1 Attach. §1.1.1 should include reciprocal language describing both Parties' 9-1-1/E9-1-1 facilities?

Intrado proposes the following language with respect to this disputed issue

> For areas where Verizon is the 9-1-1/E9-1-1 Service provider, Verizon provides and maintains such equipment and software at the 9-1-1 tandem/selective router(s) or selective router(s) and, if Verizon manages the ALI Database, this includes the ALI Database, as is necessary for 9-1-1/E9-1-1 calls . . ..

Intrado takes the position that, because the interconnection agreement identifies what components comprise Intrado's 9-1-1/E9-1-1 service offering, the interconnection agreement should contain a reciprocal provision identifying the components that comprise Verizon's 9-1-1/E9-1-1 system (Joint Issues Matrix at 22). Intrado's witness indicated that, optimally, Section 1.1.1 of the 9-1-1 Attachment should describe the function of 9-1-1 features, rather than the tools used to provide the features (Intrado Ex. 2, at 51). Intrado states that it has proposed language identical to the language in Verizon's template interconnection agreement (*Id.*). However, Intrado's witness acknowledged that Intrado and Verizon have different networks, so an accurate description of those networks would not necessarily be reciprocal (Tr. 70, 71). Intrado opines that the revised language offered by Verizon erroneously describes the access from Verizon's end users as part of the Verizon network (Intrado Initial Br. at 48).

Verizon proposes the following language with respect to Issue 6:

> For areas where Verizon is the 9-1-1/E9-1-1 Service provider, Verizon provides and maintains (a) Verizon 9-1-1/E9-1-1 tandem/selective router(s) for routing 9-1-1/E9-1-1 calls from Verizon end offices to PSAP(s) and (b) if Verizon manages the ALI Database, the ALI Database . . ..

Verizon states that Intrado's language is unacceptable because it does not accurately describe Verizon's network arrangements and capabilities due to the fact that it does not reflect the location of a 9-1-1 Tandem/Selective Router in Verizon's network (at a point between Verizon's end offices and the PSAPs) or the function of a 9-1-1 Tandem/Selective Router in Verizon's network (to route 9-1-1/E9-1-1 calls from Verizon end offices to PSAPs). Verizon specifically notes that Intrado's language with respect to Verizon's "Tandem/Selective Router(s)" is deliberately vague as to the function of these routers (Verizon Ex. 1, at 58, 59). Verizon posits that this language is intended to force Verizon to bypass its own selective routers and implement some new form of call routing (*Id.*).

Verizon concludes that its proposed language should be adopted inasmuch as it accurately describes Verizon's network arrangements and capabilities (Joint Issues Matrix at 22).

ISSUE 6 ARBITRATION AWARD

While Intrado states that it seeks language describing the 9-1-1 networks as being "reciprocal" and "identical" (Intrado Ex. 2, at 51), the Commission notes that Intrado's own witness acknowledged that "identical" language might not accurately describe each network (Tr. 71). Additionally, the Commission notes that the language proposed by Intrado is neither "reciprocal" nor "identical." In particular, the description of the network where Intrado is the 9-1-1 service provider refers to Intrado's own selective router. Intrado's proposed description of Verizon's 9-1-1 network, when Verizon is the 9-1-1 service provider, is not so specific, referring only generically to "the 9-1-1 Tandem/Selective Router(s) or selective router(s)." This lack of specificity appears to form the basis of Verizon's concern.

In contrast to Intrado's proposed description of Verizon's 9-1-1 network, the Commission finds that Verizon's proposed description of its 9-1-1 network is very specific and limiting in scope. On the other hand, Verizon's template language describing a 9-1-1 network, as reflected in Verizon's description of Intrado's 9-1-1 network, is more flexible, referring to "such equipment and software at the [carrier's] 9-1-1 Tandem/Selective Router." The template language proposed by Verizon to describe Intrado's network is not objectionable to Intrado and, presumably, from Verizon's perspective appears to appropriately describe the systems and functions of a 9-1-1 network, in sufficient specificity for the purposes of §1.1.1 of the 9-1-1 Attachment. Therefore, the Commission directs that the descriptions of each party's 9-1-1 network be truly reciprocal, and incorporate the following template language:

> For areas where Verizon is the 9-1-1/E9-1-1 Service Provider, Verizon provides and maintains such equipment and software at the Verizon 9-1-1 Tandem/Selective Router(s) and, if Verizon manages the ALI Database, the ALI Database, as is necessary for 9-1-1/E9-1-1 Calls. For areas where Intrado is the 9-1-1/E9-1-1 Service Provider, Intrado provides and maintains such equipment and software at the Intrado 9-1-1 Tandem/Selective Router(s) and, if Intrado manages the ALI Database, the ALI Database, as is necessary for 9-1-1/E9-1-1 Calls.

Issue 7 Should the agreement contain provisions with regard to the Parties maintaining ALI steering tables, and, if so, what should those provisions be?

Intrado proposes the following language with respect to 9-1-1 Attach. §1.2.1:

> The 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 9-1-1/E9-1-1 calls.

Intrado indicates that the parties need to work together as co-carriers to support call transfer capabilities (Joint Issues Matrix at 22, 23). Intrado further states that interoperability ensures that selective router-to-selective router call transfers may be performed in a manner that allows misdirected emergency calls to be transferred to the appropriate PSAP, irrespective of the 9-1-1 service provider, while still retaining access to the critical caller location information associated with the call (i.e., ALI) (*Id.*). Intrado also notes that ALI steering would be required should a Verizon-served PSAP be the recipient of a transferred 9-1-1 call (Intrado Initial Br. at 50). Intrado concludes that each party should, therefore, be required to maintain appropriate updates and routing translations for 9-1-1/E9-1-1 services and call transfers (Joint Issues Matrix at 22, 23). In support of this requirement, Intrado states that, while stand-alone ALI is an information service, it is also an integral component of the provision of 9-1-1 service (Intrado Ex. 1, at 24) as demonstrated by the Federal Communications Commission's (FCC) definition of 9-1-1 services (*Id.* at 25).

Intrado also notes that the existing commercial agreements between Intrado's affiliate and Verizon do not address the services under discussion in the context of this issue (*Id.* at 26). Additionally, Intrado indicates that Intrado Inc. is the only affiliate of Intrado that has a contractual arrangement with Verizon, and that the existing arrangement is a licensing agreement for the provision of software (Tr. 17). Inasmuch as Intrado is not a party to any agreement, Verizon may have with an affiliate, Intrado opines that it cannot avail itself of the provisions of that contract (*Id.*).

Intrado represents that its proposed language would require the parties to work cooperatively to maintain the necessary ALI steering tables to ensure that accurate and up-to-date ALI information is displayed when a wireless, Internet protocol (IP) enabled, or voice over Internet protocol (VoIP) 9-1-1/E9-1-1 call is transferred between the parties' networks (Intrado Ex. 2, at 53). Specifically, Intrado states that its language would require Intrado and Verizon to work cooperatively and store the pseudo-ANI (pANI) numbers associated with adjacent PSAPs in each party's respective ALI steering tables. Intrado states that this single mutual effort will permit a PSAP that receives a call transfer associated with a wireless or nomadic VoIP call to also receive the ALI information (*Id.* at 54) Intrado claims that as many as 30-40 percent of wireless 9-1-1 calls routinely require transfer to another PSAP, regardless of the 9-1-1/E9-1-1 service provider involved (Intrado Initial Br. at 50). Intrado posits that, without the language requested by Intrado, Ohio PSAPs opting for a competitive 9-1-1 solution will lose the ability to receive a call transfer with ALI from a Verizon served PSAP, and Verizon served PSAPs will also be unable to receive a call transfer with ALI from a PSAP served by a competitive provider (*Id.*). Intrado's witness clarified that the proposed language only affects call transfers from VoIP

or wireless calls and that wireline call transfer capabilities are unaffected (Tr. 72). Finally, Intrado asserts that interoperability and call transfer capabilities have been mandated by the Commission in 07-1199 (Intrado Ex. 2, at 53).

Verizon agrees with Intrado that the parties should work together to ensure that misdirected 9-1-1 calls are directed to the proper PSAP. Verizon explains that this is the reason that it agreed to language requiring the parties to "establish mutually acceptable arrangements and procedures for inclusion of Verizon End User data in the ALI Database" for areas where Intrado is the 9-1-1 provider and manages the ALI database (Verizon Ex. 1, at 59-61). However, Verizon posits that, because the FCC has determined that the provision of caller location information to a PSAP is an information service, and not a telecommunications service, such services fall outside the scope of interconnection agreements negotiated and arbitrated under Sections 251 and 252 (*Id.*). Therefore, Verizon objects to Intrado's proposed language with respect to 9-1-1 Attach. §1.2.1. Rather, Verizon submits that, to the extent an agreement is needed to regulate communications between the parties' ALI databases, a separate commercial agreement should be utilized. In fact, Verizon believes that such a commercial agreement is already in place between Verizon and Intrado (or an affiliate of Intrado) (Verizon Reply Br. at 38). Verizon states that, to its knowledge, this commercial agreement with Intrado provides Intrado with everything it needs to conduct its business with respect to ALI database arrangements between the parties (Verizon Ex. 1, at 59-61).

While Verizon recognizes that it has commercial agreements that address the creation of steering tables, it notes that there is no language in these agreements requiring Verizon to "maintain" another E9-1-1 service provider's steering tables, as proposed by Intrado (*Id.*). Verizon concludes that, if Intrado believes that the existing commercial agreement needs to be modified, this issue should be properly addressed outside the context of a Section 251/252 interconnection agreement (*Id.*).

ISSUE 7 ARBITRATION AWARD

The purpose of an ALI database is to associate a telephone number with a physical location. The function of the Selective Router database is similar. This purpose must be served twice in the process of a 9-1-1 call; first to determine where to terminate the call, and again to provide the PSAP with the location information associated with the caller. Thus, the ALI database may potentially serve both as a telecommunication service and as an information service. The separation of the ALI function into separate databases is a result of the network and database design choices. This is demonstrated by Verizon's own new architecture under deployment, in which the ALI and Selective Router databases are not segregated. The ALI database in that architecture is queried twice, once for call set-up and then again for the information requested by the PSAP (Tr. 162, 163). The first use is clearly a part of a telecommunications service; the latter is a part of an information service. However, regardless of the status and use of the ALI database, the issue at hand with

respect to the disputed contract language concerns ALI steering tables. The function of an ALI steering table is to provide the PSAP with a critical bit of information for a wireless or VoIP call; i.e., which ALI database should be queried in order to determine the location associated with the calling number (Tr. 164, 165).

A telecommunications service, as defined by the 1996 Act is defined as "...the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available to the public..."47 U.S.C §153(46). The 1996 Act also defines telecommunications as "...transmission ... of information of the user's choosing..."47 U.S.C. §153(43). Inasmuch as the user of 9-1-1 presumably chooses to have the PSAP receive the information needed for the PSAP to determine the caller's physical location, the delivery of information to the PSAP which makes this possible is a telecommunication service.[3] In a wireline 9-1-1 call, the information of "which ALI database to query" is provided as part of delivering a 9-1-1 call in the context of physical interconnection. For those calls which require an ALI steering database (non-PSTN calls), the ALI steering database is required to provide that same information. On this basis, the Commission concludes that ALI steering is clearly part of a telecommunications service.

In addition, the language in question discusses specifically the coordination of ALI steering tables in the context of PSAP-to-PSAP call transfer. There are two possible ways of viewing a PSAP-to-PSAP call transfer. It can be viewed as a telecommunication between two PSAPs, or as a part of the process of a 9-1-1 call. In the latter instance, the Commission determines that the ALI steering function is part of a telecommunication service. In the former instance, the ALI steering table information is part of the information which the transferring PSAP wishes to convey to the receiving PSAP. This is consistent with the definition of "telecommunications" and clearly constitutes "transmission of information 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."

Verizon has argued that the proposed language will require it to "maintain" another 9-1-1 provider's steering tables. The Commission is not convinced that a requirement to "work cooperatively to maintain" the steering tables is different from any other aspect of interconnection that requires cooperation and coordination.

Therefore, the Commission concludes that the language in question refers to a telecommunications service and, thus, is appropriate for inclusion in an interconnection

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3 While the user may not specify the "points" that information is transmitted "between and among," it is only because that function is transparent to the user. A 9-1-1 system where it was not transparent to the user would actually be less effective and more cumbersome than one in which information on the caller's location is not available.

agreement. The parties are directed to incorporate Intrado's proposed language in the interconnection agreement to be filed in this proceeding.

Issue 8 Should certain definitions related to the parties' provision of 9-1-1/E9-1-1 service be included in the interconnection agreement and what definitions should be used?

Intrado notes that the disputes between the parties with respect to the definition of "9-1-1/E9-1-1 Service Provider" and the definition of "POI" deal with the location of the POI and are addressed under Issue 1.

With regard to the definition of ANI, Intrado proposes that the term be defined as the "telephone number associated with the access line from which a call originates." Intrado points out that this is the same definition as that set forth in the NENA Master Glossary (Intrado Initial Br. at 51, citing *NENA Master Glossary of 9-1-1 Terminology*, NENA-00-001, Version 11 [May 16, 2008], at 17). Intrado states that it proposed that this term and definition be included in the interconnection agreement because the term is used in Intrado's proposed language in other sections of the interconnection agreement (*Id.*). Intrado opines that, while Verizon does not appear to have an issue with the substance of the definition, it does not agree with Intrado's proposed language in other sections of the interconnection agreement and, thus, does not think that inclusion of the term is necessary (*Id.*).

With respect to the definition of "9-1-1 Tandem/Selective Router," Intrado proposes that the term be defined as "switching or routing equipment that is used for routing and terminating originating end user 9-1-1/E9-1-1 calls to a PSAP and/or transfer of 9-1-1/E9-1-1 calls between PSAPs." Intrado submits that its proposed definition accurately reflects the functions that will be performed. Intrado notes that the FCC has stated that a selective router receives 9-1-1/E9-1-1 calls and forwards those calls to the PSAP that has been designated to serve the caller's area (*Id.* citing *Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, [2005] at ¶15). Intrado states that it is well-established that selective routers are used to transfer 9-1-1/E9-1-1 calls between PSAPs (*Id.*).

Intrado suggests that Verizon's proposed language for "Verizon 9-1-1 Tandem/Selective Router" and "Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center" should be rejected, as these two Verizon-proposed definitions are unnecessary and repetitive of the general definitions for these terms (*Id.* at 52). Intrado notes that, inasmuch as the terms "9-1-1 Tandem/Selective Router" and "Interconnection Wire Center" are already defined in the interconnection agreement, there is no reason for separate, Verizon-specific definitions for these terms (*Id.*).

With respect to the definitions in dispute, Verizon proposed as follows:

> 9-1-1 Tandem/Selective Router- Switching or routing equipment that is used for routing 9-1-11/E9-1-1 calls. In Verizon's network, a 9-1-1 Tandem/Selective Router receives 9-1-1/E9-1-1 calls from Verizon's end offices and routes these 9-1-1/E9-1-1 alls to a PSAP.
>
> Verizon 9-1-1 Tandem/Selective Router- A 9-1-1 Tandem/Selective Router in Verizon's network which receives 9-1-1/E9-1-1 calls from Verizon end offices and routes these 9-1-1/E9-1-1 calls to a PSAP.
>
> Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center- A building or portion thereof which serves as the premises for a Verizon 9-1-1 tandem/Selective Router.

Verizon opines that the source of the parties' disputes about the definitions raised in Issue 8 centers on Intrado's network architecture proposal (Verizon Initial Br. at 38). Verizon maintains that Intrado's definitions for Issue 8 must be rejected inasmuch as they incorrectly assume that Intrado is entitled to select POIs on its own network and that Verizon must interconnect with Intrado by means of direct trunks supplied by Verizon that would bypass Verizon's selective routers (*Id.*).

Verizon maintains that Intrado's language does not accurately reflect the structure of Verizon's network and the location and operation of 9-1-1 Tandem/Selective Routers in Verizon's network. Verizon submits that its own definitions of "9-1-1 Tandem/Selective Router" and "Verizon 9-1-1 Tandem/Selective Router" establish that, in Verizon's network, the 9-1-1 Tandem/Selective Router is located between the Verizon end office and the PSAP and may be used to route calls from the Verizon end office to Intrado's POI (*Id.*). Verizon maintains that Intrado's opposition to Verizon's language is premised on Intrado's incorrect position that Verizon must forgo using its selective routers to send 9-1-1 calls to Intrado-served PSAPs (*Id.*).

Verizon submits that its proposed definition of "Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center" is appropriate inasmuch as one of the POIs on Verizon's network is specifically stated in the 9-1-1 Attachment to be a "Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center."

ISSUE 8 ARBITRATION AWARD

As noted by Intrado, the following six definitions are in dispute between the parties: (1) ANI; (2) 9-1-1/E9-1-1 Service Provider; (3) 9-1-1 Tandem/Selective Router; (4) POI ; (5) Verizon 9-1-1 Tandem/Selective Router; and (6) Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center. As noted by Verizon, each of the glossary definitions identified in Issue 8 is referenced in one or more of the draft interconnection agreement

sections in Issues 1, 2 and 5. Therefore, the resolution of these definitional issues is driven by, and must be consistent with, this Commission's decisions on Issues 1, 2 and 5.

With regard to these issues, this Commission has determined that Verizon will be required, where Intrado is the provider for a given PSAP, to deliver its customers' 9-1-1 calls destined for that PSAP to a POI on Intrado's selective router (or network) for termination (Issue 1). The Commission has also determined that Intrado's POI for this purpose must be located within Verizon's service territory (Issue 1). Also, the Commission has concluded that Verizon may engineer its network on its side of the POI as it sees appropriate, and bears the cost of doing so (Issues 1 and 5). Finally, the Commission found that the interconnection agreement should include the basic framework for PSAP-to-PSAP call transfer (Issue 2).

While, based on the record in this proceeding, it appears that Verizon intends to use its selective router facilities to route 9-1-1 calls to Intrado where Intrado is the designated provider for the destination PSAP, this may not be how Verizon chooses to operate in the future. Verizon has already indicated on the record in this proceeding that it is in the process of rolling out a new architecture for selective routing (Tr. 162, 163). Given that this interconnection agreement should ideally outlast the current architecture, this Commission favors a more generic definition of a "9-1-1 Tandem/Selective Router." Therefore, the Commission finds that, rather than either of the parties' proposed language, the definition to be utilized should be as follows: "Switching or routing equipment that that is used for routing 9-1-1/E9-1-1 calls and/or providing the transfer of 9-1-1/E9-1-1 calls between PSAPs."

As to the more specific definitions proposed by Verizon to be applied to "Verizon 9-1-1 Tandem/Selective Router" and "Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center," the Commission agrees with Intrado that establishing a separate definition for those owned by Verizon adds no useful specificity. As to Verizon's claim that it is unlawful for it to be prohibited from using its selective routers to send 9-1-1 calls to Intrado-served PSAPs, it needs to be made clear that this Commission has already established that a PSAP would have only one carrier for each type of 9-1-1 call (wireline, wireless, or VoIP). If that carrier is Intrado, then Verizon must deliver its applicable 9-1-1 calls to Intrado for termination to the relevant PSAP, though it may engineer its network however it chooses, consistent with Issue 1. By reaching this determination, the Commission is not prohibiting Verizon from utilizing its selective routers.

Finally, as is discussed in Issue 1, the parties are instructed to include the phrase "with ANI" where applicable. Therefore the Commission will also instruct the parties to include the definition of ANI proposed by Intrado, as it is the definition set forth in the NENA Master Glossary and is, therefore, consistent with the usage of the term generally.

Issue 9 Should 9-1-1 Attachment Section 2.5 be made reciprocal and qualified as proposed by Intrado?

Verizon proposed the following language in 9-1-1 Attach. §2.5, that would allow it to directly deliver 9-1-1/E9-1-1 calls to one of Intrado's PSAP customers:

> Nothing in this agreement shall be deemed to prevent Verizon from delivering 9-1-1/E9-1-1 calls directly to a PSAP for which Intrado Comm is the 9-1-1/E9-1-1 service provider.

Further, in an attempt to address concerns raised by Intrado, Verizon also proposed the following language in 9-1-1 Attach. §2.6, that would allow Intrado to directly deliver 9-1-1/E9-1-1 calls to one of Verizon's PSAP customers:

> Nothing in this agreement shall be deemed to prevent Intrado from delivering by means of facilities provided by person other than Verizon, 9-1-1/E9-1-1 calls directly to a PSAP for which Verizon is the 9-1-1 service provider.

Intrado objects to Verizon's proposed language contained in 9-1-1 Attach. §§2.5 and 2.6. Intrado opines that the proposed language should be rejected based on its belief that this is a matter outside of the scope of a Section 251(c) interconnection agreement (Intrado Initial Br. at 53). At a minimum, Intrado avers that the adopted language should reflect that either party may only be permitted to directly deliver 9-1-1/E9-1-1 calls to the other party's PSAP customer if the PSAP customer specifically authorizes the requesting party to do so (*Id.*). In support of its position, Intrado points out that there may be instances where a PSAP may select more than one 9-1-1/E9-1-1 service provider. For example, Intrado recognizes that a PSAP may choose to have both Verizon and Intrado provide 9-1-1/E9-1-1 services (*Id.* citing Intrado Ex. 2, at 60; Tr. 86). To the extent that this scenario exists, Intrado opines that the adopted language should reflect that such arrangements are to be driven by the PSAP, and not pursuant to Verizon's unilateral mandates (*Id.* citing Tr. 87).

While Verizon believes that its proposed §2.6 addresses Intrado's concerns related to reciprocity, Verizon rejects Intrado's proposed clarification that the interconnection must be authorized by the PSAP. Specifically, Verizon submits that whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and is outside the scope of the parties' agreement. Verizon considers Intrado's proposed language to be an unwarranted intrusion upon its rights with respect to third parties (Verizon Initial Br. at 39, citing Verizon Ex. 1, at 68, 69).

ISSUE 9 ARBITRATION AWARD

Based on a review of the parties' stated positions, the Commission agrees with Verizon that the issue of whether party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and is outside the scope of the interconnection agreement before the Commission in this proceeding. In reaching this determination, the Commission recognizes that a PSAP may choose to enter into agreements with two separate 9-1-1/E9-1-1 providers based on its own individual needs and situation. The specifics of such arrangements extend beyond the scope of this arbitration proceeding. Therefore the Commission agrees with Intrado that Verizon's proposed language in 9-1-1 Attach. Sections 2.5 and 2.6 should be deleted.

Issue 10 What should Verizon charge Intrado for 9-1-1/E9-1-1 related services and what should Intrado charge Verizon for 9-1-1/E9-1-1 related services?

Issue 12 Can Verizon require Intrado to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities, and arrangements?

Intrado proposed the following language:

> 9-1-1 [Attach.] §1.7.3 ...When Intrado Comm is the 9-1-1/E9-1-1 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 arrangements provided by Intrado Comm for such interconnection.

Additionally, Intrado Comm proposed Pricing Appendix B, captioned "Intrado Comm. Services"

As the first portion of Issue 10 (what Verizon may charge Intrado) focuses on whether and how the agreement may reference the parties' tariffs, this aspect will be addressed under Issue 11, which deals more directly with the issue of tariffs.

With regard to the rates that Intrado is proposing to charge Verizon under Issue 10, Intrado states that it should have reciprocal rights to charge Verizon "port" or "termination" charges when Verizon interconnects with its network. Intrado further states that, while it believes that Verizon imposes trunk port or termination charges on carriers seeking to terminate 9-1-1/E9-1-1 service traffic on Verizon's network, it notes that these

charges may not be separately stated by Verizon but, rather, may be contained in other rates Verizon imposes on competitors for 9-1-1/E9-1-1 services (Intrado Ex. 1, at 29). Intrado states that its rates are similar to those charged by Verizon for trunk ports and connections to its network (Joint Issues Matrix at 25, 26).

In addition, Intrado posits that, while Section 252 authorizes state commissions to determine whether the rates to be charged by the ILEC are just and reasonable, it provides no authority for a state commission to adjudicate a competitor's rates during a Section 252 proceeding. Intrado states that, to the extent that Verizon wishes to challenge Intrado's proposed rates, it should file a separate proceeding. (Intrado Initial Br. at 56, citing Virginia Arbitration Order at ¶588).

Further, Intrado states that its rates should not be capped at the rate that Verizon charges for "comparable" services (Joint Issues Matrix at 31). Intrado submits that neither federal nor state law requires a competitor's rates, aside from intercarrier compensation, to be capped at the rates charged by the ILEC. Additionally, Intrado asserts that there is no requirement that Intrado's rates should be "benchmarked" against Verizon's rates given that Verizon's argument for "benchmarking" is based on intercarrier compensation rates (Intrado Initial Br. at 60). Further, Intrado points out that the FCC's Wireline Competition Bureau, as well as several state commissions, have already rejected Verizon's argument (*Id.* at 61). Finally, Intrado argues that this Commission has already made clear that Intrado's rates are "reasonable" (*Id.* at 57).

Verizon notes that the parties have agreed that the transport and termination of 9-1-1/E9-1-1 calls will be handled on a non-charged basis. Thus, according to Verizon, there should be no language in the interconnection agreement that would allow Intrado to bill Verizon any charges for the transport and termination of 9-1-1/E9-1-1 calls from Verizon end users to PSAPs served by Intrado or for the transport and termination of 9-1-1/E9-1-1 calls transferred from Verizon-served PSAPs to Intrado-served PSAPs (Joint Issues Matrix at 27).

In addition, Verizon maintains that, since Intrado is obligated to interconnect with Verizon at a technically feasible POI on Verizon's network, there should also be no Intrado charges for Intrado-provided facilities that carry 9-1-1/E9-1-1 calls, and no charges for interconnection to the Intrado network (*Id.* at 27, 28). Verizon also maintains that the rates Intrado has proposed for what it calls "port" or "termination" charges (but which are not specified as such in the agreement) are completely arbitrary and unsupported by any cost or other evidence. Verizon states that it is not clear from Intrado's proposed language what activities these charges cover, or how such charges were developed (*Id.* at 28, 29).

Verizon proposes language in the Pricing Attachment that would require Intrado to charge no more than Verizon charges Intrado for the same services, facilities, and arrangements (Verizon Ex. 1, at 76, 77). Verizon notes that, as an ILEC, its rates are subject

to Commission scrutiny and, therefore, are subject to a presumption of reasonableness (Verizon Initial Br. at 44). Verizon states that, if Intrado wants to charge Verizon higher rates, Intrado should be required to show, based on its costs, that its proposed rates are reasonable. Verizon observes that the practice of benchmarking CLEC rates to ILEC rates is a common approach to preventing CLEC pricing abuses used by this Commission (Joint Issues Matrix at 31).

Verizon observes that rate parity provisions are standard terms in Verizon's interconnection agreements, and benchmarking to the ILEC's rates is quite common in a number of areas. Verizon notes that CLECs must charge ILECs the same reciprocal compensation rates as the ILEC charges the CLEC, unless the CLEC can justify higher rates based on its costs. In addition, according to Verizon, the FCC and numerous states, including Ohio, have requirements capping CLEC access rates at the rate of the competing ILEC (Verizon Ex. 1, at 77, 78).

ISSUES 10 AND 12 ARBITRATION AWARD

As to whether Intrado can charge Verizon for ports while, with respect to its own rates, Verizon differentiates between transport and termination charges for 9-1-1, and facilities charges, the ILEC fails to recognize this same distinction with respect to Intrado. Specifically, Verizon indicates that Intrado will have to pay for a POI on Verizon's network (Tr. 135), and will have to pay for any facilities it obtains from Verizon to transport calls from that POI to Intrado's network (Joint Issues Matrix at 27, 28). At the same time, Verizon notes that the parties have agreed not to charge for transport or termination of 9-1-1 traffic (Verizon Ex. 1, at 72, 73). This recognizes a distinction between transport and termination, for which Verizon will not charge, and facilities, for which Verizon will charge. However, when discussing Intrado's port charges to Verizon, Verizon appears to ignore this distinction and, instead, inappropriately concludes that, because the parties have agreed not to charge for transport or termination, Intrado should also not charge for switch port facilities (*Id.*).

Regarding the rates Intrado can charge, while it is indeed true that CLEC rates are regularly compared to, or capped at, the rates of the ILEC with which they compete, the requirement to do so is limited to intercarrier compensation (i.e. switched access and reciprocal compensation) and does not extend to the issues in dispute in this proceeding. The Commission observes that, despite Verizon's statement that benchmarking is "quite common in a number of areas," the company has identified only a single example from the New York Public Service Commission that applies such benchmarking to the provision of facilities, such as switch ports. While the state of New York may have an "established practice" of benchmarking facilities charges to those of the ILEC, Ohio does not, and we see no compelling reason to establish such a practice in this case.

Intrado contends that Section 252 provides no authority for a state commission to adjudicate a competitor's rates during a Section 252 proceeding. In addressing this contention, the Commission points out that it is simply exercising its authority pursuant to Sections 252(b)(1) and 252(b)(4) to consider those issues presented for arbitration and to determine the reasonableness of the resulting interconnection agreement terms and conditions. Specifically, Verizon has presented for arbitration the issue of Intrado's proposed port charges. Therefore, this Commission clearly has the authority in the context of this proceeding to determine appropriate rates for Intrado's port charges, notwithstanding the fact that the Commission is not relying upon the pricing standards set forth in Section 251(d).

While maintaining that any attempt by Verizon to challenge the appropriateness of Intrado's rates lies outside this arbitration proceeding, Intrado, at the same time, cites other arbitration decisions of this Commission to support the contention that its proposed rates are reasonable (Intrado Initial Br. at 56, 57; Intrado Reply Br. at 16, each citing 08-537, Arbitration Award at 21). The Commission finds it contradictory for Intrado to first claim that this Commission has no authority to decide the question of the appropriateness of the proposed rates, but then cite to this Commission's previous decisions in support of its contention that its proposed rates are reasonable. If it wishes to cite this Commission's prior arbitrations to support the reasonableness of its rates, it cannot then argue that the Commission cannot arbitrate those rates.

The Commission, therefore, finds that the proposed language should be incorporated in the final interconnection agreement as follows:

> 9-1-1 Attachment Section 1.7.3 - Intrado's proposed final sentence beginning "When Intrado Comm is the 9-1-1/E9-1-1 Service Provider..." and ending "...for such interconnection."
>
> Pricing Attachment Appendix B, captioned "INTRADO COMM SERVICES" should be adopted.

Finally, as noted above, the issue of the inclusion of tariff references in the agreement is discussed at length in the context of Issue 11.

Issue 11 Should all "applicable" tariff provisions be incorporated into the agreement? Should tariffed rates apply without a reference to the specific tariff? Can tariffed rates automatically supersede the rates contained in Pricing Attachment, Appendix A without a reference to the specific tariff? Should the Verizon proposed language in Pricing Attachment Section 1.5 with regard to "TBD" rates be included in the agreement?

Intrado identifies the following three main disputes raised in the context of this issue:

(1) The incorporation of "applicable" tariff provisions into the agreement.

(2) Intrado's concern that tariff charges should not be permitted to trump those interconnection-related charges in the interconnection agreement, and that any charges imposed by either party should be specifically identified in the agreement.

(3) Rates marked as "TBD" in the Pricing Attachment should not be superseded by tariffed rates.

(Intrado Initial Br. at 58).

Intrado states that, in light of its desire for certainty with respect to the parties' relationship, it cannot agree to "unspecified" terms and conditions that Verizon may later determine are 'applicable' to the services being offered in the interconnection agreement (*Id.*). While Intrado recognizes that there may be non-Section 252(d)(1) services that Intrado will purchase from Verizon for which a tariff is the appropriate pricing mechanism, it maintains that, if a tariffed rate is the appropriate rate for a certain service, the applicable tariff should be set forth in the parties' interconnection agreement, rather than a generic reference to "applicable" tariffs (Intrado Initial Br. at 55).

Additionally, Intrado references a West Virginia arbitration decision and a FCC Wireline Competition Bureau arbitration decision as support for its argument (Intrado Initial Br. at 59, citing Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc.* West Virginia Administrative Law Judge Award at 24; and *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration et al.*, Arbitration Order at ¶608).

Intrado posits that state retail tariffs governing 9-1-1/E9-1-1 services are not appropriate for Verizon's provision of interconnection-related services to Intrado under the interconnection agreement, and that any interconnection-related charges to be assessed on Intrado should be developed pursuant to Sections 251/252 and set forth in the interconnection agreement (Intrado Initial Br. at 54) unless those services are subject to non-Section 252 pricing (*Id.* at 55). Intrado notes that Section 252(d) sets forth the pricing standards for three categories of charges: (1) interconnection and network element charges, (2) transport and termination charges, and (3) wholesale telecommunications services charges (*Id.* at 54, 55). Intrado further states that Verizon cannot use tariffs to circumvent the requirements of 251/252, (*Id.* at 55) and that "(u)nspecified tariff terms and

conditions deemed by Verizon to be "applicable" should not be incorporated into the interconnection agreement"(Joint Issues Matrix at 29).

Although Intrado recognizes that there may be services that it would purchase that are not covered by Section 252(d)(1), it claims that these services are not within the framework of interconnection arrangements for competitive 9-1-1 services (Initial Br. at 55). Intrado further states that without pricing or specific tariff references explicitly stated in the interconnection agreement, Intrado cannot effectively compete with Verizon because it will not know its operating costs (Intrado Ex. 1, at 27).

Verizon notes that the attachments to the agreement (e.g., the Collocation Attachment, Verizon proposed 9-1-1 Attachment, and Verizon proposed Pricing Attachment) set out the charges that Verizon will bill for the services that it will provide under the agreement. Verizon observes that, while Intrado does not dispute the rates that Verizon proposes in Appendix A of the Pricing Attachment, it has inappropriately proposed to delete much of Verizon's rate-related language in the 9-1-1 Attachment (Joint Issues Matrix at 25). Verizon notes that Intrado specifically objects to tariff references proposed by the ILEC (Verizon Initial Br. at 40).

Verizon notes that Intrado objects to the proposed tariff language for two reasons. First, Intrado submits that the tariff rates may not have been developed pursuant to total element long-run incremental cost (TELRIC) pricing. Second, Intrado argues that without established pricing for every element that Intrado may purchase from Verizon, Intrado cannot effectively compete. As to the first argument, Verizon points out that TELRIC pricing is only required for a specific list of network elements identified by the FCC. As to the second argument, Verizon points to the fact that its wholesale services are still under Commission review and approval (*Id.* at 40, 41).

Verizon points out that the Pricing Attachment provides, *inter alia*, that Verizon's services shall be provisioned as set forth in its tariffs or, in the absence of a tariff rate, as set out in Appendix A to the Pricing Attachment. Verizon describes the rates set forth in Appendix A as being its standard rates offered to other CLECs (*Id.*). Verizon states that, as public utilities normally do, it files tariffs for the services it provides. Verizon maintains that applying tariffed rates for the services that it provides to Intrado is appropriate because these rates are subject to Commission review and approval in accordance with applicable legal standards. Verizon also points out that tariff references are a standard part of its interconnection agreements. Moreover, Verizon states that it has a duty of nondiscrimination under the 1996 Act with regard to the pricing of its services. The company explains that its use of tariffed rates helps ensure that Intrado receives the same, nondiscriminatory prices as other CLECs (Joint Issues Matrix at 29).

Verizon states that Intrado's proposal to limit the applicable tariffs to just those specifically cited in the interconnection agreement or in Appendix A of the Pricing

Attachment is unreasonable inasmuch as neither Verizon nor Intrado can identify, in advance, each of the tariffs and corresponding rates and sections that apply to a particular services that Intrado might possibly purchase at some point in the future, but for which prices are not stated in the agreement (Verizon Initial Br. at 40).

Verizon also asserts that, as noted with respect to Issue 10, Intrado is incorrect in its position that any charges Verizon may assess on Intrado must be developed in accordance with Section 252 (i.e., must be TELRIC-based). In support of its position, Verizon notes that the fact that Intrado identifies a service or feature as an interconnection element does not make it subject to TELRIC pricing (Joint Issues Matrix at 30). Finally, Verizon notes that it has proposed language in Pricing Attach. §1.5 that addresses the question of how "TBD" (to be determined) rates will be replaced with actual rates (*Id.* at 30, 31).

ISSUE 11 ARBITRATION AWARD

While under the filed rate doctrine, it could be argued that tariffed rates could supersede the rates included in an interconnection agreement, this possibility is obviated with respect to unbundled network elements due to the pricing requirements set forth in Section 252. Additionally, in order for a filed rate to "trump" a rate included in the interconnection agreement, there would have to be a tariffed service that precisely matched the description, terms and conditions of a service offered under the interconnection agreement, while having a rate different from that included in the interconnection agreement. There has been no demonstration on the record or on brief in this, or any previous arbitration for which Intrado has petitioned in Ohio, that this situation exists. Indeed, as discussed later, this scenario does not exist. If indeed such an "overlap" were to exist between the tariffed services and the services priced according to Section 252 in the interconnection agreement, the pricing rules of Section 252 would take precedence.

With regard to Intrado's concern that existing tariffs could supersede rates in the interconnection agreement, the Commission notes that Section 1.2 of the interconnection agreement, which is agreed-upon language, indicates that the interconnection agreement (identified as the Principal Document) shall take precedence over filed tariffs in the event of a conflict. This is consistent with Verizon's interpretation of "applicable" tariffs as reflected in their initial brief. As to the rates identified as "TBD," these rates will be determined pursuant to Verizon's proposed language, subject to review by this Commission and/or the FCC or a court of competent jurisdiction.

Verizon's point that it is impossible to determine at this time what services Intrado may at some future time order from Verizon is well taken. There are services that Intrado may well wish to avail itself of under the terms of this agreement, for which rates are not listed in this agreement. A key point in this regard is Verizon's statement that its proposed language "would apply applicable tariffed rates to services that Intrado may

take, but for which prices are not stated in the agreement" (emphasis added) (Verizon Initial Br. at 40). The Commission notes that the incorporation of the reference to tariffs under this scenario will help to ensure that Intrado receives the same nondiscriminatory treatment as any other similarly situated CLEC. In order to avoid further dispute in this regard, this Commission will require that the interconnection agreement itself include that understanding of "applicable tariff." In Section 2 of the Glossary, the parties will be required to define "applicable tariffs" as "those tariffs of either party that identify, define, and set terms, conditions and rates for services, ordered by the other party, that are not subject to the terms, conditions and rates identified in this Agreement, modifications to this Agreement, or successor Agreements." The parties are instructed to use the term consistently throughout the interconnection agreement.

With this addition, the Commission finds that, in the following areas, proposed language should be used in the final agreement as follows:

General Terms and Conditions Section 1.1 – Verizon's proposed language is to be included.

9-1-1 Attach. Sections 1.3.5 and 1.3.6 (as numbered by Intrado) - "...Verizon's [A]pplicable Tariffs and..." is to be included.

9-1-1 Attach. Section 1.4.2 (as set out in Verizon's [A]pplicable Verizon Tariffs and this Agreement)..." is to be included.

9-1-1 Attach. Section 1.7.3 "...Verizon's [A]pplicable Tariffs and..." is to be included.

Pricing Attach. Section 1.3 - Intrado's proposed language is to be excluded.

Pricing Attach. Section 1.5 - Verizon's proposed language is to be included, Intrado's proposed language is to be excluded.

Issue 13 Should the waiver of charges for 9-1-1 call transport, 9-1-1 call transport facilities, ALI Database, and Master Street Address Guide (MSAG), be qualified as proposed by Intrado by other provisions of the Agreement?

Intrado proposes that the following language be incorporated within the interconnection agreement to be approved in this proceeding:

1.7.2 Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment . . .

1.7.3 Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment . . . .

Intrado states that each party's ability to bill the other party should be limited to the requirements in the interconnection agreement and the rates contained in the incorporated Pricing Attachment (Initial Br. at 61, Joint Issues Matrix at 31). Intrado notes that the agreed-upon language with respect to this issue specifically identifies reciprocal compensation, intercarrier compensation, exchange access service, the ALI database and the MSAG as items for which the parties are not permitted to impose charges, and states that it is not intending the language at issue here to now create an opportunity to impose charges for these items (Initial Br. at 61, 62).

Verizon proposes that the following language be incorporated within the interconnection agreement to be approved in this proceeding:

1.7.2 Notwithstanding any other provision of this Agreement or Tariff or otherwise . . . .

1.7.3 Notwithstanding any other provision of this Agreement or Tariff or otherwise . . . .

Verizon maintains that Intrado language creates a loophole that may permit charges for services for which the parties have agreed not to charge (Verizon Initial Br. at 45). Specifically, Verizon submits that Intrado's proposed language contemplates that Intrado might bill Verizon for interconnection or facilities for transport of 9-1-1/E9-1-1 calls to Intrado's network (Verizon Ex. 1, at 80, 81). Verizon opines that this loophole potentially undercuts the parties' agreement that neither will bill the other for transport of 9-1-1/E9-1-1 calls. Verizon avers that Intrado should not be billing Verizon any charges for interconnection or facilities for transport of 9-1-1/E9-1-1 calls (Joint Issues Matrix at 31, 32).

ISSUE 13 ARBITRATION AWARD

As an initial clarification, the issue of whether, and under what conditions, Intrado may be able to charge Verizon for facilities and or interconnection is dealt with in Issue 1, and will not be addressed here.

Each party maintains that it is its intention to not charge for a list of identified services associated with the transport and termination of 9-1-1 calls (Interconnection Agreement §§1.7.2.1 through 1.7.2.4 and §1.7.3). While the parties agree as to the items identified on the list, they disagree regarding the parameters of this commitment. Verizon's language provides that, regardless of any other language in the Agreement, there would be no charge for the identified services. Intrado's language limits what can be

charged for relative to those items explicitly identified in the 9-1-1 Attachment or Appendix A of the Pricing Attachment.

Intrado's proposed language is open-ended and is, therefore, problematic due to the inability to identify every single item that might be ordered or supplied by the parties. In addition, a missed item anywhere else in the agreement has the potential to raise a later issue with regard to these items. Verizon's proposed language has the advantage of not being open-ended and, instead, specifically identifies those services for which there will be no charge. Therefore, the Commission finds that Verizon's proposed language provides a clear and direct method of achieving the desired limitation. Based on this determination, the Commission will incorporate Verizon's proposed language relative to the first sentence of Section 1.7.2 and the first sentence of Section 1.7.3 of the 9-1-1 Attachment.

Issue 14 Should the reservation of rights to bill charges to 9-1-1 controlling authorities and PSAPs be qualified as proposed by Intrado by "to the *extent permitted under the parties' tariffs and applicable law*"?

Intrado proposes that the following bolded language be incorporated within the interconnection agreement to be approved in this proceeding:

9-1-1 Attach. §2.3 **To the extent permissible under the parties' tariffs and applicable law,** [N]othing in this agreement shall be deemed to prevent Verizon from billing to a Controlling 9-1-1 Authority or PSAP rates or charges for:

9-1-1 Attach. §2.4 **To the extent permissible under the parties' tariffs and applicable law,** [N]othing in this agreement shall be deemed to prevent Intrado Comm from billing to a Controlling 9-1-1 Authority or PSAP rates or charges for:

Intrado submits that the Commission-approved tariffs and state and federal statues, laws, and other regulations should govern whether either party may impose charges on 9-1-1 Controlling Authorities and PSAPs. Further, Intrado posits that the interconnection agreement should not be permitted to usurp existing tariffs and applicable laws. Specifically, Intrado contends that, absent its proposed language, either party could have the ability to bill Ohio PSAPs for a range of services even if the party no longer provides those services (Initial Br. at 63 citing Tr. 16). Specifically, Intrado expresses the concern of whether Verizon will actually be providing services to a PSAP when Intrado is the designated 9-1-1/E9-1-1 service provider for that PSAP. In support of its position, Intrado references the fact that Verizon's witness could not identify what other services, other than call delivery, Verizon would provide to a PSAP once Intrado is the designated 9-1-1/E9-1-1 provider (*Id.* at 64 citing Tr. 168). In particular, Intrado notes that, once Intrado is designated as the 9-1-1/E9-1-1 service provider, Verizon will no longer provide selective

routing services, ALI database services, or database management services to a PSAP (*Id.* citing Intrado Ex. 1, at 13). Finally, Intrado asserts that the only entity that may control the parties' pricing actions is the Commission, through the enforcement of the applicable law, rules, and tariffs (*Id.* at 64).

Verizon considers Intrado's proposed language to be nothing more than an unwarranted attempt to restrict Verizon's ability to charge a PSAP for service that it continues to provide even when Intrado provides 9-1-1 services to that same PSAP. Verizon acknowledges that it does not have the ability to bill an entity for services that it does not provide. Further, it submits that nothing in the undisputed portions of Sections 2.3 and 2.4 would allow it to do otherwise. Verizon emphasizes that the agreed-upon language in Sections 2.3 and 2.4 pertains to the reservation of rights between Verizon and Intrado and does not impact any rights with respect to third parties. Verizon opines that any billing disputes between a PSAP and Verizon are not appropriate to be addressed in the context of the interconnection agreement between Intrado and Verizon (Initial Br. at 47 citing Verizon Ex. 1, at 83).

ISSUE 14 ARBITRATION AWARD

To the extent that the specific PSAP objects to the transporting of traffic by a particular 9-1-1/E9-1-1 emergency service provider, the Commission determines that the resulting dispute is limited to the PSAP and the 9-1-1/E9-1-1 service provider. It does not logically follow that the interconnection agreement that is the subject of this proceeding is the appropriate venue to address the aforementioned concern. Any issues with respect to the billing of services between a 9-1-1/E9-1-1 emergency service provider and a PSAP extend beyond the scope of this interconnection agreement and pertain to future disputes for which the potential PSAP complainant is not even a party to this proceeding. The rights of such PSAPs should be addressed within the specific agreements entered into between the PSAPs and the applicable 9-1-1/E9-1-1 provider.

Notwithstanding this determination, the Commission recognizes that the parties have agreed to language reflecting that nothing in this agreement shall be deemed to prevent Verizon or Intrado from billing rates or charges to a controlling 9-1-1 authority or PSAP under specified conditions. The only issue in dispute pertains to the following prefacing language: "To the extent permissible under the parties' tariffs. . ."

In considering the disputed language, this Commission points out that, regardless of the stated positions, the parties' ability to charge entities that are not parties to this agreement is controlled by the existing law and applicable tariffs for the company providing such services. To make it clear, neither party should expect to be able to bill any party in a manner contrary to either law or its approved tariffs. While the language proposed by Intrado attempts to express this principle, it does so imprecisely. Specifically, the Commission recognizes that one carrier's tariffs are not binding on another carrier.

Inasmuch as Intrado's proposed language could be construed to indicate otherwise, the Commission will amend Intrado's proposed language in Sections 2.3 and 2.4 of the 9-1-1 Attachment as follows: In Section 2.3, "the Parties' Tariffs" should be replaced by "Verizon's Tariffs" and in Section 2.4, "the Parties' Tariffs" should be replaced with "Intrado's Tariffs."

Issue 15 Should Intrado have the right to have the agreement amended to incorporate provisions permitting it to exchange traffic other than 9-1-1/E9-1-1 calls?

Intrado seeks to include the following language as part of the already agreed-upon language in §1.5 of the General Terms and Conditions:

> Notwithstanding the foregoing, the parties agree that: (a) Intrado may seek to offer telecommunications and local exchange services other than 9-1-1/E9-1-1 calls in the future; and (b) upon Intrado's request, the parties may amend this agreement as necessary to provide for the interconnection of the parties' networks pursuant to 47 U.S.C. §251(c)(2) for the exchange of traffic other than 9-1-1/E9-1-1 calls.

Intrado submits that its proposed language is necessary in the event that it obtains the necessary certification and decides to offer additional telephone exchange services (Initial Br. at 65 citing Intrado Ex. 1, at 36). In support of its position, Intrado explains that the negotiation and arbitration of interconnection agreements involves a significant amount of time and resources. Intrado posits that there is no reason for the parties to restart the arbitration process relative to provisions that have already been resolved by the parties or by the Commission (*Id.* citing Tr. 33). Intrado submits that its position is consistent with the FCC's determination that "any carrier attempting to arbitrate issues that have previously been resolved in an arbitration solely to increase another party's costs would be in violation of the duty to negotiate in good faith and could be subject to enforcement (*Id.* citing *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 19 FCC Rcd. 13494, ¶28 [2004]).

As further support for its position, Intrado represents that, consistent with the agreed-upon terms of the proposed interconnection agreement, any amendment to be made to the agreement will be subject to negotiations between the parties, dispute resolution before the Commission, and possibly arbitration before the Commission (*Id.* at 66, citing General Terms and Conditions §4.6). Finally, Intrado asserts that an order by the Commission modifying Intrado's status in Ohio would be considered a change in law affecting provisions of the agreement. Specifically, Intrado notes that the proposed interconnection agreement (General Terms and Conditions §4.6) considers the occurrence of a change in law as follows:

> If any legislative, regulatory, judicial, or other governmental decision, order, determination, or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a party hereunder, or the ability of a party to perform any material provision of this Agreement, the parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to confirm the Agreement to Applicable Law.

(*Id.* at 67).

Verizon considers Intrado's proposed language with respect to this issue to provide Intrado with the unilateral right to an amendment outside of the interconnection agreement's change of law provisions. Verizon opines that Intrado's position is incorrect inasmuch as the parties agreed to negotiate and arbitrate this interconnection agreement based largely on the fact that Intrado is seeking to provide only 9-1-1 related services to PSAPs. Therefore, Verizon submits that, absent a change in law affecting provisions of the interconnection agreement which would allow a party to request an amendment to the agreement, Intrado should not have a unilateral right to seek an amendment to the agreement. Based on the arguments raised by Intrado with respect to this issue, Verizon submits that if indeed a change in certification constitutes a change of law, there would be no need for Intrado's proposed language in §1.5 of the General Terms and Conditions.

To the extent that Intrado seeks to greatly expand the scope of the agreement, Verizon believes that Intrado should negotiate an entirely new agreement in which all of the provisions of the agreement will be at issue and the parties will be able to engage in fair and balanced negotiations of the interconnection agreement, trading off one provision against the other (Initial Br. at 48, 49 citing Verizon Ex. 1, at 83-85). In support of its position, Verizon highlights 47 CFR §51.809, which prohibits CLECs from being able to "pick and choose" favorable contract terms and conditions (*Id.* at 47).

ISSUE 15 ARBITRATION AWARD

Based on a review of the parties' stated positions, the Commission finds that Intrado's proposed language should be rejected. In reaching this determination, the Commission rejects Intrado's contention that an expansion of the company's certification constitutes a change in law subject to General Terms and Conditions §4.6. Specifically, the Commission highlights the fact that General Terms and Conditions §4.6 provides, in part, that:

> If any legislative, regulatory, judicial, or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the

> Parties shall promptly renegotiate in good faith in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law . . ..

Certainly, the expansion of Intrado's certification to now include competitive local exchange company authority in no way affects any material provision of this agreement, the rights or obligation of a party under the agreement, or the ability of a party to perform any material provision of this agreement. The expanded certification simply signifies new, additional services to be offered by Intrado. To the extent that Intrado seeks interconnection with respect to these new services, the Commission finds that Intrado must seek to renegotiate the interconnection in its entirety and not limit the negotiations/dispute resolution to just the single issue of the inclusion of the additional services. To do otherwise, the Commission would be allowing Intrado to unfairly benefit by not allowing for the parties' or the Commission's consideration of the all of the terms and conditions of the interconnection agreement in their entirety.

Consistent with this determination, the Commission notes that Rule 4901:1-7-07(B), O.A.C., provides that parties to an existing interconnection agreement may entertain bona fide requests for an interconnection arrangement, service, or unbundled network element that is subsequent to, unique, or in addition to an existing interconnection agreement and is to be added as an amendment to the underlying interconnection agreement to the extent that the parties can negotiate such an amendment. In the event that the parties cannot negotiate such an agreement, pursuant to Rule 4901:1-7-07(C)(2), a party may seek arbitration of a subsequent interconnection agreement. As such, all terms and conditions could be subject to arbitration.

Issue 16 Should the Verizon proposed term "a caller" be used to identify what entity is dialing 9-1-1, or should this term be deleted as proposed by Intrado?

Verizon proposes the following highlighted language be included as part of 9-1-1 Attach. §1.1.1:

> 9-1-1/E9-1-1 arrangements provide **a caller** access to the appropriate PSAP by dialing a 3-digit universal telephone number, "9-1-1".

Verizon contends that its inclusion of "a caller" in 9-1-1 Attach. §1.1.1 is necessary in order in order to provide clarity regarding the fact that a Verizon customer, as the "caller," can reach PSAPs served by Intrado by dialing 9-1-1. In support of its position, Verizon states that its proposed language accurately describes the function of 9-1-1/E9-1-1 arrangements; specifically, the access that 9-1-1/E9-1-1 arrangements provide to a caller (Verizon Initial Br. at 49, 50 citing Verizon Ex. 1, at 85).

Intrado submits that there is no reason for the inclusion of a general description of which entity is dialing 9-1-1 (Intrado Initial Br. at 67 citing Intrado Ex. 2, at 61). Specifically, Intrado finds that the inclusion of "a caller" is too restrictive inasmuch as it would limit the 9-1-1 arrangement to fixed line subscriber dial tone and would not include the ability for 9-1-1 calls from wireless devices or interconnected VoIP providers to be able to be completed to Intrado PSAP customers (*Id.* citing Tr. 83, 169, 170).

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Based on the record in this proceeding, the Commission determines that Verizon's proposed language should be deleted from the proposed agreement inasmuch as, rather than clarity, its inclusion will result in additional disputes. In reaching this determination, the Commission notes that the agreement itself fails to define the proposed term. Additionally, as reflected by the record in this case, any potential definition of this term could be quite broad in scope (*Id.*). Therefore, in order to avoid the creation of further disputed issues, the proposed language should be deleted. As a result, 9-1-1 Attach. §1.1.1 will read as follows:

> 9-1-1/E9-1-1 arrangements provide access to the appropriate PSAP by dialing a 3-digit universal telephone number, "9-1-1".

The deletion of "a caller" will have no adverse effect regarding the intent of this interconnection agreement to apply to the scenario in which Verizon customers terminate 9-1-1 calls to PSAPs served by Intrado. Instead, it would appear that the deletion of "a caller" will actually assist in reducing the potential for dispute between the parties inasmuch as it is an undefined term.

It is, therefore,

ORDERED, That Intrado and Verizon incorporate the directives set forth in this Arbitration Award within their final interconnection agreement. It is, further,

ORDERED, That, within thirty days of this Arbitration Award, Intrado and Verizon shall docket their entire interconnection agreement for review by the Commission, in accordance with the Rule 4901:1-7-09, O.A.C. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each party shall file, for the Commission to review, its version of the language that should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That, within ten days of the filing of the interconnection agreement, any party or other interested persons may file written comments supporting or opposing the proposed interconnection agreement language and that any party or other interested persons may file responses to comments within five days thereafter. It is, further,

ORDERED, That nothing in this Arbitration Award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this Arbitration Award does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate any party to a contract from the provisions of any state or federal law that prohibits restraint of trade. It is, further,

ORDERED, That this docket shall remain open until further order of the Commission. It is, further,

ORDERED, That a copy of this Arbitration Award be served upon Intrado, Verizon, their respective counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

JSA;geb

Entered in the Journal
JUN 24 2009

Reneé J. Jenkins
Secretary