

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Intrado Communications of Virginia)	
Inc. for Arbitration Pursuant to Section 252(b) of)	WC Docket No. 08-185
The Communications Act of 1934, as amended,)	
to Establish an Interconnection Agreement with)	
Verizon South Inc. and Verizon Virginia Inc.)	
)	
Petition of Intrado Communications of Virginia)	
Inc. for Arbitration Pursuant to Section 252(b) of)	WC Docket No. 08-33
the Communications Act of 1934, as amended,)	
to Establish an Interconnection Agreement with)	
Central Telephone Company of Virginia and)	
United Telephone Company Southeast LLC)	
(collectively, "Embarq"))	

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

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REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

Level 3 Communications, LLC (“Level 3”) submits its Reply Comments in response to the Federal Communications Commission’s (“Commission”) Public Notice on issues relating to the competitive provision of E911/911 services.¹ Level 3 supports the competitive provision of E911/911 services. Level 3 provides competitive E911 alternatives to many competitive local exchange carriers (“CLECs”), Voice over Internet Protocol (“VoIP”) providers and other carriers. Nonetheless, Level 3 cautions the Commission not to proceed in a hasty manner in this proceeding under the guise of public safety, as suggested by Intrado Communications of Virginia Inc. (“Intrado”). The issues raised by Intrado’s petition, and more generally by competitive provision of E911 services, are complex and involve significant costs and other burdens that need to be balanced among stakeholders. Consequently, these issues cannot be resolved in this

¹ *Public Notice*, DA 09-1262 (rel. June 4, 2009).

proceeding with these parties alone, but must be addressed in a broader rulemaking proceeding in which *all* stakeholders have an opportunity to participate. While the stance of the instant case in Virginia before the Commission deals specifically with interconnection between an incumbent local exchange carrier (“ILEC”) and a CLEC, the issues posed implicate the responsibilities of other CLECs to interconnect with Intrado.

At the same time that Intrado has sought arbitration with Verizon in Virginia, it has requested interconnection with Level 3 on a CLEC-to-CLEC basis. Intrado proposes, in this regard, to replace the ILEC that currently provides the 911 services with Intrado – though in the Intrado context unconstrained by any of the restrictions imposed on the ILECs. In sum, Intrado is looking to shift all the costs of the interconnection to CLECs and VoIP providers by dictating points of interconnection (“POIs”) and proposing the carrier with which it interconnects assume all of the costs to transfer the service from the ILEC to Intrado. It is Intrado’s view that its entry into the competitive 911 market should be subsidized by CLECs and VoIP providers by means of these entities incurring the costs of migration and network build. The Commission should not support competitive entry into the 911 market by requiring CLECs to subsidize that entry.

I. INTRODUCTION AND SUMMARY

This proceeding raises two central questions - whether Intrado is entitled to interconnection with an ILEC at all and, if so, under what terms and conditions. If the Commission determines that Intrado is entitled to interconnect with ILECs, then the Commission should not narrowly address the second question in this proceeding. Instead, the Commission should open a rulemaking to determine the appropriate rates, terms and conditions of interconnection between local exchange carriers and competitive

E911/911 providers. Given the complexities involved in the provision of competitive E911/911 service, the number of diverse parties that could be affected, the significant resources required for local exchange carriers, Public Safety Answering Points (“PSAPs”) and other parties to accommodate competitive 911 providers and alternative 911 infrastructure, a generic rulemaking proceeding is appropriate.

Intrado fails to address the significant cost-shifting inherent in its proposed interconnection terms. There are substantial costs involved in establishing an alternative 911 network because all the parties involved, whether it be a PSAP, the prior ILEC providing the selective router service or a CLEC, have to deploy new facilities, shift traffic, and change, upgrade or deploy additional equipment. Intrado takes the position that *all* of these costs should be borne by either the local exchange carriers with whom Intrado seeks to interconnect or by the consumers through increased rates. Intrado has made a business decision to become an alternative provider of 911 services and as the sole provider of delivery of emergency traffic to a PSAP seeks an exclusive ability to do so. As reflected in the Comments of the Public Utilities Commission of Ohio, the unique, potentially non-competitive nature of the Intrado/PSAP relationship combined with the similarly unique requirement for all carries to deliver traffic to a PSAP requires special rules to ensure system integrity and fair treatment among carriers.² Yet, in this proceeding Intrado is unwilling to accept the economic burden of the unique characteristics of its proposal and its business plan.

² In Ohio, the Public Utilities Commission has restricted the scope of Intrado’s certification to only 911 traffic, and has required that PSAPs not select more than two providers of 911 and E911. *See* Comments of the Public Utilities Commission of Ohio, WC Dockets 08-33 and 08-185, July 2, 2009, at 6-7.

II. BACKGROUND/STATEMENT OF FACTS

A. Level 3's Existing 911 Infrastructure

Level 3 is a CLEC providing VoIP services to a broad array of customers who utilize 911 services. As such Level 3 is vitally interested in the manner in which 911 competition is allowed to displace prior providers, and how such displacement impacts the integrity of the 911 system and the rights and obligations of Level 3.

Level 3 provides 911 services through its own facilities and the facilities of the ILEC. Level 3 operates and maintains a redundant and diverse transport infrastructure for 911 calls. Level 3 operates and maintains three sets of primary and secondary 911 switches geographically situated to maximize diversity options and minimize latency issues. "On-net" transport solutions originate from a primary 911 switch and leverage the Level 3 network to reach the "ILEC" selective router ("SR") that serves one or more PSAPs. "Off-net" transport solutions originate from a secondary 911 switch and leverage the network of a Level 3 vendor to reach the same ILEC SR accessed via the "On-net" transport solution. Level 3 has invested significant time and money to deploy competitive 911 services on a national basis, and currently has the capability to deliver Commission-compliant 911 services to more than 83% of the households in the United States. The initial investment of time, money and effort to establish this network were significant, and the costs to operate and maintain Level 3's 911 infrastructure and service are large.

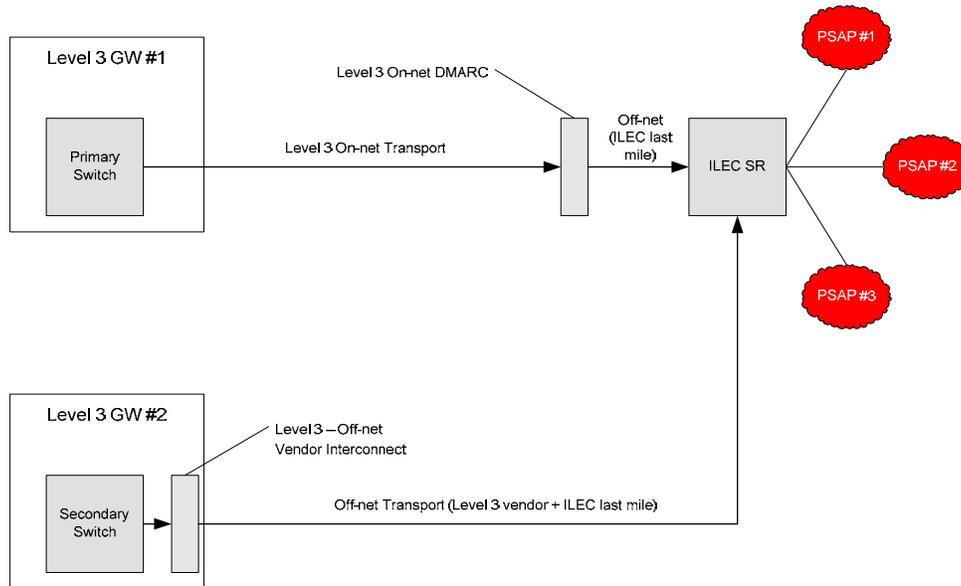
The diversity between the "On-net" and "Off-net" transport solutions includes three primary components. First, the locations of the Level 3 primary and secondary 911 switches themselves are diverse on the Level 3 network. Primary and secondary 911

switches are located in different states. Second, the “Off-net” transport solution is achieved via transport provided by a Level 3 vendor on the vendor’s network. “Off-net” transport solutions are provisioned from the Level 3 secondary 911 switch and interconnect with Level 3’s vendor network at the secondary 911 switch location for transport to the target ILEC SR. The cost of maintaining this kind of diverse “Off-net” transport solution typically exceeds thousands of dollars in monthly recurring cost (“MRC”) per DS1. Lastly, given the typical overlap present on telecommunications networks, all “Off-net” transport solutions are ordered with special instructions to avoid specific addresses as part of the transport provided by Level 3 vendors. Special instructions are intended to avoid inadvertent overlap between the “On-net” and “Off-net” transport solutions. Special transport routing instructions may and do lead to additional incremental costs to Level 3. Level 3’s diversity architecture plan attempts to prevent any single point of failure between the Level 3 switch and the ILEC SR on the diverse “On-net” and “Off-net” transport paths.

Level 3 has no control over the transport between the ILEC SR and the PSAP(s). Level 3 maintains DS0-level trunking on both “On-net” and “Off-net” DS1 transport solutions for each PSAP served by the ILEC SR. When a provider attempts to provision competitive 911 services, all of the preceding architecture needs to be replicated for each PSAP served by a competitive provider, in effect creating a secondary network to serve just a portion of the end users served under the existing infrastructure. The previously recognized economies of scale resulting from the ability to send all 911 traffic to a single router ceases to exist, and costs for all carriers are increased – with the exception, as suggested by Intrado, for the Intrado/PSAP aspect of the equation.

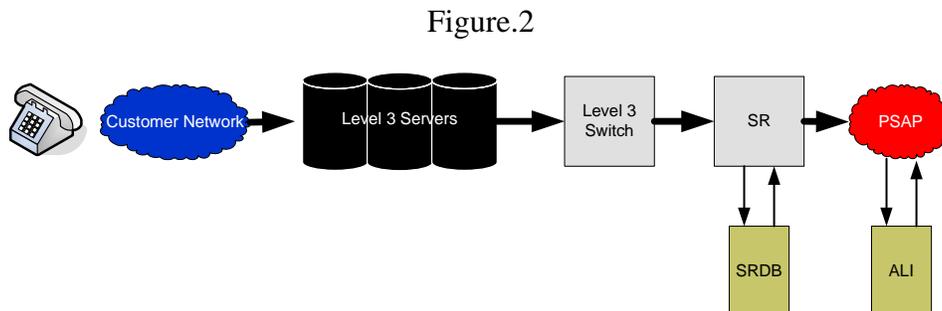
Figure 1 is a high level representation of the Level 3 “On-net” and “Off-net” DS1 transport solutions.

Figure 1



A 911 call placed by a subscriber of one of Level 3’s customers accesses the Level 3 network via high speed interconnect between Level 3 and its customer. Level 3 passes the 911 call through a series of servers to extract information and determine the appropriate 911 switch for routing. Level 3 load balances 911 calls across the appropriate primary and secondary 911 switches. The 911 call then egresses the appropriate 911 switch via DS0 trunking utilizing either “On-net” or “Off-net” DS1 transport solutions to the target ILEC SR. Once the call reaches the target ILEC SR, the ILEC SR dips the Selective Router Database (“SRDB”) for the Emergency Service Number (“ESN”) of the appropriate PSAP and routes the call to the PSAP subtending the ILEC SR based on the ESN. Finally, after the call reaches the PSAP, the PSAP performs another dip to the Automatic Location Identification (“ALI”) database to determine the

address of the 911 caller. Figure 2 is a high level representation of 911 call flows through the Level 3 network.



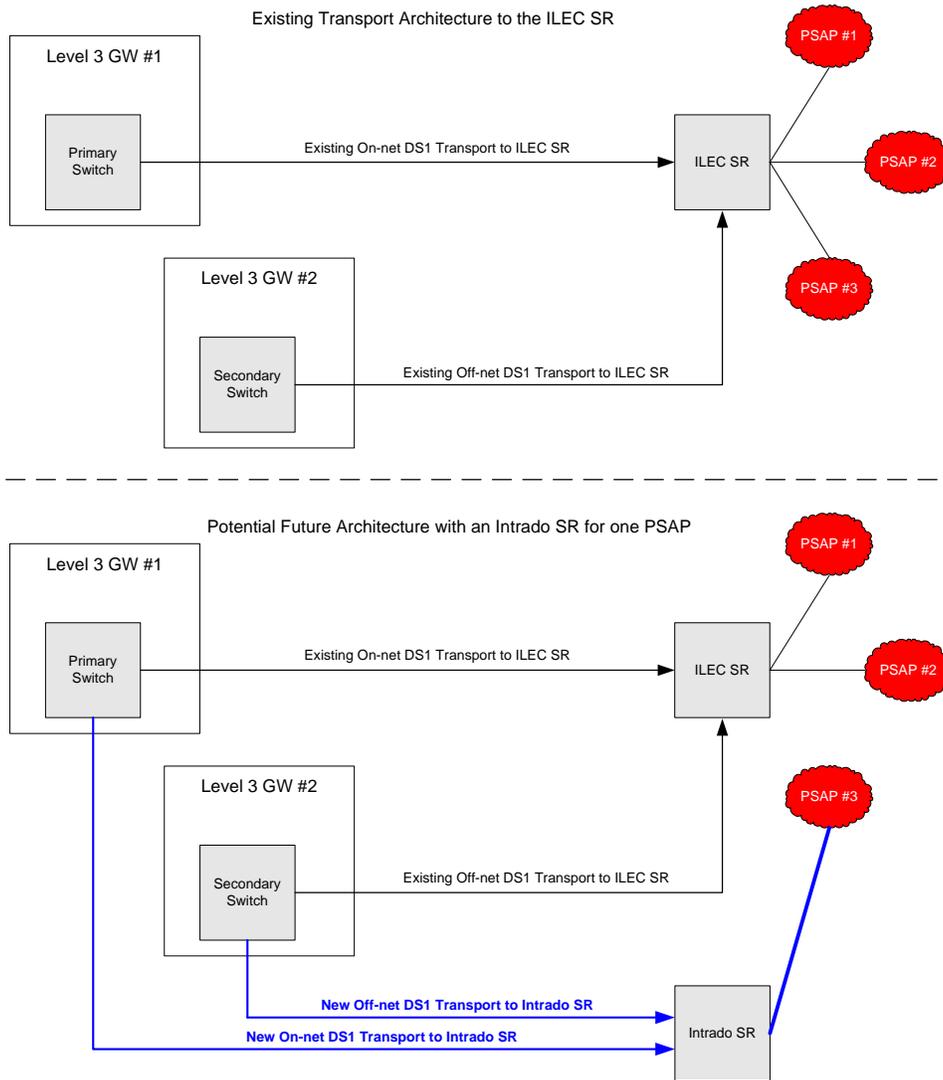
B. Level 3's 911 Infrastructure If Intrado Prevails

Intrado's position, if sustained, will require Level 3 to deploy additional diverse DS1 transport solutions through Intrado's SRs. Moreover, if Intrado's new SR only serves a subset of the PSAPs served by the existing ILEC SR (which seems likely), Level 3 will not be able to vacate existing diverse DS1 transport solutions. Consequently, where Level 3 was able to maintain a single set of diverse network routes to service multiple PSAPs via the ILEC SR, Level 3 will be required to maintain multiple, diverse networks to serve the exact same PSAPs. It is significant to note that each new competitive 911 provider that establishes a new SR, or each Intrado SR that was previously served through the ILEC SR, will compound this duplication of facilities. For example, using the diagram below, if Intrado, or another competitive 911 provider, establishes a separate SR for each of the three PSAPs served through the ILEC SR, Level 3 will be required to maintain three separate diverse networks where a single diverse network sufficed prior to Intrado's entry as a 911 provider.

Figure 3 compares Level 3's existing transport architecture deployed to reach an ILEC SR and multiple subtending PSAPs with the potential future architecture required if

Intrado becomes the SR provider for only a subset of the PSAPs served by the existing ILEC SR.

Figure 3



C. End User Migration to New Selective Router

In the past, Level 3 has cooperated with requests from another carrier to migrate end user customers to alternative facilities or a new route, and the migration has entailed the expenditure of considerable effort and resources and has taken months to complete. When Level 3 has moved traffic in response to such a request, the requesting carrier has

compensated Level 3 for these costs. Intrado is unwilling to do that. Migrating customers to another SR is a large scope project that requires a minimum of six months to execute. The migration process includes multiple steps and tasks that must be coordinated between both internal Level 3 organizations and external organizations. Any actions that the Commission takes in the context of this arbitration will necessarily inform as to what the rights and responsibilities of a carrier are in respect to a request from Intrado to migrate traffic to a new SR, and caution should be taken before proceeding down a path that could have severe unintended consequences.

The migration of traffic from an ILEC SR to a competitive provider SR is a labor-intensive, time-consuming process that entails the completion and repetition of over 41 separate steps. In order to ensure an equitable balance of the costs of competitive 911 service, the costs of these activities must not be borne solely by the carrier performing the migration. Rather, the costs of competitive 911 should be borne by the competitive 911 provider and PSAPs involved. The funds allocated to the maintenance and upgrade of the 911 system are perfectly suited for just that purpose – the payment for the costs related to the upgrade of the 911 system.

III. REPLY COMMENTS

Intrado seeks “competitive” entry into a market that can, with respect to each PSAP, only be characterized as a monopoly. At the same time, Intrado seeks to facilitate its entry into the 911 marketplace by shifting the costs of establishing its position in that market, including its transport and interconnection costs, to other parties. Similar to Intrado’s arbitration position, Intrado is requesting that Level 3 interconnect with Intrado for the purpose of migrating end user customers from the SR to which they are homed to

one owned and managed by Intrado and thus reachable only through Intrado. Intrado has taken the same position with Level 3 that it has taken in its arbitration with Verizon and Embarq, *i.e.*, that Level 3 is required to interconnect with Intrado at a point selected by Intrado on Intrado's network and that Level 3 should bear all of the costs of establishing the point of interconnection. While as yet competitive 911 providers have not sought the leverage of an arbitration proceeding against Level 3, they have used the leverage of the PSAP involved and the specter of a failure in the delivery of 911 calls in an attempt to gain concessions in commercial negotiations.

Intrado further seeks to shift the cost of its business plan to Level 3 by refusing to compensate Level 3 for any of the costs incurred by Level 3 to move traffic from an existing SR to an Intrado-established SR. In addition, unlike a rehome situation in which all of the traffic on an SR is moved to another SR, the migration of end user customers that Intrado seeks will, in the vast majority of cases, still require Level 3 to maintain network infrastructure to reach the original SRs because not all of the PSAPs in the calling area will be served by Intrado's new SR.

A. The Market to Serve Each PSAP is a Monopoly Market.

Intrado urges the Commission to fully endorse and frame the competitive provision of 911/E911 networks and services"³ by supporting Intrado's petition; however, Intrado is not truly entering into a competitive market and should not be afforded the full breadth of rights of a CLEC.

The market to serve a PSAP is best characterized as one in which a monopoly is enjoyed by the carriers serving that PSAP. All carriers by necessity must be able to

³ Comments of Intrado Inc. and Intrado Communications of Virginia Inc., WC Docket Nos. 08-33 and 08-185, at 6.

deliver traffic to a PSAP. Consequently, once a PSAP has deemed a certain carrier as the exclusive means by which to reach it, no alternative carrier option is available. The situation is more akin to the monopoly control ILECs enjoyed prior to the advent of the Act. Yet, in treating the unique characteristics of the provision of interconnectivity to PSAPs by the ILEC, it has been recognized that the singular, exclusive role of the ILEC was one best dealt with by asserting regulatory control over the costs and manner the ILEC provided such service to interconnected carriers. This is the most analogous situation to what Intrado seeks from this proceeding – to obtain the ability to become the exclusive provider of 911/E911 service to specific PSAPs.

The same level of regulatory control exerted over ILECs and other monopoly providers of services should apply to competitive 911 providers when they have an exclusive or near-exclusive right to serve a particular PSAP and therefore have exclusive control over access to that PSAP. Specifically, if properly regulated, competitive provision of 911 is a public benefit. The Commission, however, must ensure that competitive providers are subject to appropriate access and cost controls to check their monopoly position. The best method to ensure these controls are in place is not mandatory interconnection, as Intrado proposes, but rather commercially negotiated interconnection arrangements where affected parties can negotiate the most favorable terms for their particular circumstances.⁴ Commercial negotiation will allow parties to realize the most economically efficient interconnection and PSAP access arrangements and will properly balance the costs of developing a competitive 911 network. To facilitate these commercial negotiations, the Commission should establish parameters

⁴ See Comments of Verizon, WC Docket Nos. 08-33 and 08-185, at 9-10; Comments of Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq, WC Docket Nos. 08-33 and 08-185, at 3-4, 6-7.

around the ability of the competitive 911 provider to dictate terms of interconnection, specifically as regards the reimbursement of costs incurred by CLECs to comply with the 911 competitors' migration and infrastructure requests. Furthermore, in order to ensure non-discrimination in these terms, such agreements should be publicly available⁵.

B. Intrado Must Bear the Cost of its Entry Into the Market.

Given Intrado's entry into the 911 market on an exclusive basis, the costs of Intrado's entrance should be fully borne by it. Provision of competitive 911 service is Intrado's business plan, and it is one that Intrado crafted to address that market. Intrado should, when developing its business plan, incur the costs of building and extending its network to POIs that the carriers currently utilize, in conformance with the one POI per LATA rules of the Commission.⁶ This point becomes exponentially more important insofar as the customer set critical to Intrado's business plan have exclusive arrangements with Intrado by which traffic can only reach the PSAPs through the use of Intrado services and all carriers must deliver traffic to this customer set.

Most interconnection and traffic exchange arrangements require the parties to share the costs of interconnection or exchanging traffic by, for example, bearing the costs of facilities on its side of the POI, sharing the costs of joint facilities, or paying costs based upon percentage of usage. Where the POI is located is determined either by

⁵ Intrado has already used the argument that the "commercial agreements" it has entered into with a carrier such as Embarq are protected by confidentiality provisions, such that a CLEC such as Level 3 has no way of assuring itself that it is not being treated in a discriminatory manner. Therefore, public availability of such agreements is necessary in a sole provider/necessary facility context to provide transparency and prevent discriminatory conduct.

⁶ The Commission determined that one POI per LATA was a reasonable network architecture for interconnection and exchange of traffic in the ILEC monopoly context. *See, e.g., Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communication sAct for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order, CC Docket Nos. 00-218, 00-251, 17 FCC Rcd 27039, at ¶ 52 (2002). This structure is a reasonable default for 911 interconnection as well given the current structure of the 911 network, subject to the rights of the parties to negotiate a different arrangement.

agreement of the parties or as required under the Act in the case of ILECs. In a typical CLEC-to-CLEC negotiation, the location of the POI is made at the point which is the most convenient and cost effective for the party receiving the least financial benefit from the arrangement. Intrado would have this dynamic reversed by establishing the POI where it is most convenient and cost effective for it. However, appropriate cost sharing in an interconnection arrangement such as Intrado is suggesting is especially important where one party controls access to a particular set of customers or services.

Unlike true, balanced negotiated arrangements, Intrado seeks to shift the entire cost and burden of interconnection onto the carriers with whom it interconnects. Rather than agreeing upon a POI on the network of the carrier with whom Intrado seeks to interconnect, or even at the edge of that network, Intrado dictates a POI on its network. Intrado compounds this inequitable proposal by requiring the carrier to bear all of the costs of reaching the designated POI. Depending upon where Intrado's network is located and the location of the POI it dictates, Intrado would have the carrier deploy and solely bear the cost of hundreds of miles of facilities in order to facilitate Intrado's monopoly market entry. For example, as AT&T discussed in its Comments, under Intrado's proposal, if Intrado places a SR in Jacksonville or Miami, Florida and then obtained the business of a PSAP in Pensacola, Intrado would expect AT&T to transport 911 calls from Pensacola all the way to Jacksonville or Miami, an air distance of 500 miles at no cost to Intrado.⁷ This is the type of subsidized competitive market entry that has failed to promote innovation and investment in other areas and should not be utilized

⁷ Comments of AT&T, Inc., WC Docket Nos. 08-33 and 08-135, at 8 n. 19. *See also* Comments of The Virginia Telecommunications Industry Association, WC Docket Nos. 08-33 and 08-135, at 2 ("Intrado requested that Citizens establish trunking, at its own cost and without any reimbursement, between Citizens switch in Floyd, Virginia and a connection point to Intrado located in Raleigh, North Carolina.")

in the context of competitive 911 service.⁸ Intrado should not be able to arbitrarily determine where other carriers are required to establish POIs with Intrado. If Intrado desires for a carrier to extend network from where it exists for 911 to interconnect with Intrado, Intrado should incur the costs the carrier is required to incur to establish the new network.

As suggested by AT&T, inequitable cost-shifting, such as Intrado proposes, is made worse in those situations in which a competitive provider serves only certain portions, *i.e.*, only those end users that Intrado has successfully won as customers such that carriers are required to maintain two (or more)⁹ networks in those locations – one (or more) for the competitive provider in its “won” markets and one for the remaining markets in which the competitive provider has been unsuccessful in making the PSAP a customer.¹⁰ Only in the rare instances in which a competitive provider serves every PSAP served previously through an ILEC SR would a carrier be able to replace the original network entirely with a network to the new SR. Even Intrado would be hard-pressed to assert this would be the case in many locations even years after Intrado enters the market as a competitive provider.

C. Intrado Should be Subject to Appropriate Rate and Access Requirements.

If Intrado is permitted to become the de facto sole provider of service to PSAPs, it should be subject to the same restriction on levying costs on other carriers as the ILEC or other entity that controls “bottleneck facilities,” namely, charges for transport, switching

⁸ See Comments of AT&T, Inc., WC Docket Nos. 08-33 and 08-185, at 7-8.

⁹ At least one commenter proposed limiting the number of competitive 911 providers in a particular region to two (in addition to the ILEC). Comments of the Public Utility Commission of Ohio, at 7. Even this limitation could require carriers to maintain at least two separate, redundant 911 networks where one has sufficed.

¹⁰ Comments of AT&T, Inc., at 11-12.

etc. should be no greater than the current rates of the ILEC and reduced to the degree that any party can show that Intrado's costs of providing such services are lower than the ILEC's. Since the passage of the Telecom Act and the Commission's history of orders implementing that Act, ILECs, as the historical monopoly, have been subject to restrictions on how much they can charge competitive providers for interconnection, unbundled network elements and other facilities or services over which the ILECs have exclusive control. If Intrado is given the right to become the exclusive provider through which to reach a PSAP, it will stand in the same position vis-à-vis other carriers that the ILECs occupied in the local market.

The Commission has not reserved price and access restrictions to the ILECs but given the same treatment to other entities that have exclusive control of "bottleneck facilities" or customers, or that other carriers have no choice but to use in order to reach certain customers. For example, in the *CLEC Access Charge Order*,¹¹ the Commission determined that CLECs have exclusive control over access to the end users they serve and interexchange carriers ("IXCs") have no choice but to use the network and facilities of the CLEC in order to reach those customers.¹² The Commission noted that, in some cases, a CLEC's control of access to its end users enabled the CLEC to charge IXCs rates for transport, switching and other services that greatly exceeded the rate the ILEC charged for the same services.¹³ Accordingly, the Commission determined that CLECs could charge IXCs or other carriers no more than the ILEC rate for the use of the same facilities, e.g., transport, local switching, tandem switching, in providing terminating

¹¹ *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 16 FCC Rcd. 9923 (2001) ("*CLEC Access Reform Order*").

¹² *CLEC Access Reform Order*, at ¶¶ 30-31.

¹³ *CLEC Access Reform Order*, at ¶ 34.

switched access service to reach the CLEC's end user customers.¹⁴ Clearly, the reasons for which price and access requirements are put into place – the ability of one or more providers, through exclusive control of facilities or access to increase the price of such access – is not limited to incumbents. Therefore, designation as a “competitive” provider should not insulate Intrado or any other competitive 911 provider from regulatory control over its ability to control the price and terms under which third parties can reach the PSAPs it serves.

Similarly, in the 911 context, the Commission has determined that entities that own or control access to 911 capabilities must allow VoIP providers to access those capabilities at the same rates, terms and conditions as they are made available to other providers.¹⁵ In that case, the Commission identified several 911 capabilities traditionally provided by ILECs, including interconnection to the SR.¹⁶ In part because of their unique control of 911 capabilities, the Commission established rules requiring ILECs, PSAPs and other entities to make those capabilities available to VoIP providers. As in that case, if Intrado is permitted to provide competitive 911 service and thereby take over the 911 capabilities previously provided by the ILEC, it should be subject to similar requirements to maintain reasonable access at non-discriminatory rates, terms and conditions.

D. Intrado's Agreements with PSAPs and Carriers that Serve These PSAPs Should be Made Public to Provide Transparency and Prevent Discriminatory Treatment.

As is the case for other monopoly providers, the agreements between Intrado, the PSAPs and the carriers that are interconnected with Intrado to serve these PSAPs should

¹⁴ *CLEC Access Reform Order*, at ¶¶ 45, 55.

¹⁵ *Implementation of the NET 911 Improvement Act of 2008*, Report and Order, WC Docket No. 08-171, 23 FCC Rcd. 15884 (2008) (“*Implementation of NET 911 Act*”).

¹⁶ *Implementation of NET 911 Act*, at ¶15.

be a matter of public record. Only by making public the terms of Intrado's exclusive arrangements with PSAPs and the other carriers involved in the arrangement can the Commission ensure that the agreements are reasonable, in the public interest and do not discriminate against interconnected carriers whose customers must be able to reach those PSAPs served on an exclusive basis by Intrado. Further, insofar as PSAPs are public service agencies and Intrado is contracting with them to provide a service as critical as 911, the terms and conditions of these agreements should be available for public inspection to ensure that the technical and financial terms are appropriate to maintain the security, reliability and availability of the 911 network for all consumers. For example, all parties should be able to assure themselves that from a technical perspective Intrado is maintaining a diversity of routing from its SR back to the PSAP. And, carriers should be confident that Intrado is not discriminating between carriers that are required to interconnect to deliver traffic to the PSAP.¹⁷

E. If Competitive Provision of 911 is Authorized, the Commission Should Establish Clear Migration Requirements to Ensure the Reliability of the 911 Network.

As discussed above, the process to migrate customers from an ILEC SR to an Intrado SR is a complex, multi-step, labor-intensive endeavor subject to potential interruption, delay or failure at many steps. Given the critical importance of a properly-functioning 911 network, none of these steps can be skipped or short-circuited and each malfunction must be corrected before the next step can be completed. In fact, it is not only possible but likely that each SR migration may have a different timetable, require different resources or facilities and be subject to different constraints on the part of the

¹⁷ Recently Level 3 has been informed that the Embarq Florida/Intrado interconnection agreement for 911 services is unavailable for inspection due to confidentiality obligations within that agreement.

migrating LEC. The fact-specific, circumstance-dependent nature of SR migration further justifies the use of commercial arrangements between a competitive 911 provider, such as Intrado, and the carriers with whom that provider interconnects and militates against a one-size-fits-all mandatory interconnection regime such as that proposed by Intrado.¹⁸

If the Commission declines to allow interconnection for competitive 911 providers through commercial agreements and instead determines that interconnection and end user migration should take place in a regulated environment through Commission rules, the Commission should establish clear guidelines on the timing, obligations and testing processes of all carriers involved in an SR migration. Neither Intrado nor its PSAP customers should be allowed to establish an arbitrary flash cut date in an effort to leverage carriers to interconnect prematurely with Intrado, thereby risking the integrity and security of the 911 network. All migrations from the current ILEC serving the originating carrier serving a PSAP should be done in a planful, fully tested manner. No migration should be allowed to be requested prior to six months after a final Commission ruling authorizing competitive 911 providers to interconnect, and a time frame for the migration of 911 traffic in this context should not be required for any less than six months from the date of original request. Any migration of customers from one SR to another should take place pursuant to an executed agreement with Intrado and the PSAP, and Intrado and a LEC. Further, given the degree of expertise and resources required to accomplish a migration with a high degree of integrity, Intrado should not be allowed to make cut over date requests that a carrier is unable to reasonably

¹⁸ See *Implementation of NET 911 Act*, at ¶ 22 (“the nation’s 911 system varies from locality to locality and overly specific rules would fail to reflect those local variation.”).

accommodate with the normal and customary resources available to it at the date of request.

F. The Provision of 911 Service is the Provision of Telecommunications Services and Should be Provided by Qualified, Certified Carriers.

The Commission should clarify within the context of the Arbitration that the provision of network services from the point at which the originating carrier exchanges traffic for transport to the SR and from there to the PSAP (*See* Figure 2, above) is considered the provision of telecommunications services and as such the entity providing the services needs to be a duly authorized CLEC, subject to the conditions that the Commission requires. The Commission needs to make clear that the operation of network facilities from and through the SR down to the PSAP constitutes the operations of a telecommunications network such that registration and qualification as a CLEC is necessary.

Given the critical importance of an efficient, functioning 911 network, it is imperative that the entities providing this service are qualified to operate such a network. If the Commission determines that competitive 911 providers should be entitled to enter the market, subject to the interconnection and pricing limitations discussed above, the Commission (and State regulatory authorities as applicable) must ensure that every competitive provider has demonstrated its fitness to deploy, operate and maintain a 911 network. For example, Level 3 has already received a request from a county government operating a PSAP to build facilities to a new SR it intends to establish in displacement of the ILEC without any certification from the state or federal authorities as to its qualifications to operate such a network. Few would dispute that a PSAP is qualified to and capable of serving as the answering, routing and dispatch provider for emergency

services and first responders in a particular locale; however, that role does not automatically translate into being qualified to operate a 911 network. The integrity and reliability of the critical 911 network cannot be placed in the hands of entities that are not in the business of operating a network, *i.e.*, certified and qualified as CLECs, whose qualifications have been reviewed and approved by the applicable state regulatory authority and/or this Commission.

G. Competitive 911 Services Raises Too Many Complex Issues to Be Resolved Adequately in This Proceeding and Should be the Subject of a Commission Rulemaking.

As these and other comments demonstrate, the competitive provision of 911 raises numerous, complex issues that cannot adequately be addressed in the context of an interconnection arbitration proceeding. Even if the Commission decides competitive 911 providers are entitled to interconnection with other carriers, the pricing, access, operational and other issues that must be resolved before 911 traffic can be migrated to these new providers are beyond the scope of this proceeding. Accordingly, if the Commission answers the first question raised by Intrado's Petition affirmatively, the Commission must establish a rulemaking proceeding to determine the rates, terms and conditions of that interconnection and to address the other issues that proceed from such interconnection. A generic rulemaking proceeding is the only way to ensure that *all* interested parties get a full and fair opportunity to participate and that the resulting rules are equitable, supported by a full record and well-reasoned. Proceeding in any other fashion invites litigation and uncertainty and undermines the robust, redundant 911 infrastructure upon which consumers depend, and doing otherwise threatens not only the integrity of the 911 system but the safety of the citizens it serves.

IV. CONCLUSION

For the foregoing reasons, Level 3 urges the Commission to proceed cautiously if deciding to permit the competitive provision of 911 service and to permit such providers unconstrained interconnection rights. If the Commission elects to allow Intrado to enter the 911 market, the Commission should establish a rulemaking proceeding to develop the pricing, access and other rules necessary to ensure the just, reasonable and non-discriminatory provision of such services.

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