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September 11, 2009

Via Electronic Mail and Federal Express

Karen Nickerson
Commission Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904

Re: **Docket No. 08-61,** ***In the Matter of the Petition of Intrado Communications Inc. for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware LLC (filed March 5, 2008)***

Dear Secretary Nickerson:

Intrado Communications Inc. ("Intrado Comm"), by its attorneys, respectfully submits this supplemental authority in connection with the above-referenced case. On September 10, 2009, the North Carolina Utilities Commission issued its final order in the arbitration between Intrado Comm and AT&T in North Carolina. Specifically, the North Carolina commission reaffirmed its earlier Recommended Arbitration Decision that Intrado Comm's 911/E911 service is a "telephone exchange service" as defined in the Communications Act of 1934, as amended ("Act"), for which AT&T is required to offer interconnection pursuant to Section 251(c) of the Act.

Copies of the North Carolina commission's Recommended Arbitration Decision and final order are attached. If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

Chérie R. Kiser
Counsel for Intrado Communications Inc.

Attachments
cc: Service List (via U.S. mail and electronic mail)

51898.1

Attachment 1

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-1187, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of Intrado Communications Inc. for	)	
Arbitration Pursuant to Section 252(b) of the	)	RECOMMENDED
Communications Act of 1934, as Amended, with	)	ARBITRATION
BellSouth Telecommunications, Inc. d/b/a	)	ORDER
AT&T North Carolina	)	

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 13, 2008

BEFORE: Commissioner Lorinzo L. Joyner, Presiding, Chairman Edward S. Finley, Jr., and Commissioner William T. Culpepper, III

APPEARANCES:

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FOR THE USING AND CONSUMING PUBLIC:

Lucy E. Edmondson
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Public Staff – North Carolina Utilities Commission
4326 Mail Service Center
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BY THE COMMISSION: This arbitration proceeding is pending before the North Carolina Utilities Commission (the Commission) pursuant to Section 251 and Section 252 of the Telecommunications Act of 1996 (the Act) and North Carolina General Statute 62-110(f1).

On December 21, 2007, Intrado Communications Inc. (Intrado) filed a Petition for Arbitration of an Interconnection Agreement (or ICA) with BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina (AT&T). Intrado also moved that the deadline for the filing of prefiled testimony be extended by 40 days. On December 27, 2007, Intrado filed a Motion for Admission *Pro Hac Vice* for Chérie R. Kiser, Angela F. Collins, and Rebecca Ballesteros.

By Order dated December 28, 2007, the Commission extended the deadline for the filing of prefiled direct testimony by Intrado to January 30, 2008, prefiled rebuttal testimony by AT&T to March 11, 2008, and prefiled rebuttal testimony of Intrado to March 21, 2008.

On January 3, 2008, the Commission granted the Motion for Admission *Pro Hac Vice* for Chérie R. Kiser, Angela F. Collins, and Rebecca Ballesteros.

On January 15, 2008, AT&T filed a Response to the Petition for Arbitration and a Motion for Abeyance. On January 23, 2008, Intrado filed an Opposition to AT&T's Motion for Abeyance. On January 28, 2008, AT&T filed a Response to Intrado's

Opposition to Motion for Abeyance. On January 29, 2008, the Commission issued an *Order of Abeyance* to allow the parties to negotiate in good faith in order to resolve or clarify issues before the Commission. The Commission also modified the dates for the filing of testimony previously established in the December 28, 2007 Order.

On February 7, 2008, Intrado filed a copy of a *Finding and Order* issued by the Public Utilities Commission of Ohio for judicial notice by the Commission.

On March 20, 2008, Intrado filed a Motion to extend the deadline for the filing of direct and rebuttal testimony, which was granted by Order of the Commission on March 25, 2008. On April 24, 2008, Intrado prefiled the testimony of Thomas W. Hicks, Cynthia Clugy, and Carey F. Spence-Lenss.

On April 24, 2008, Intrado filed a Motion to extend the deadline for the filing of the joint issues matrix and joint proposed procedural schedule; the Commission granted the Motion by order issued on April 25, 2008. On May 1, 2008, Intrado moved for an extension of time to file the joint issues matrix; the Commission granted the Motion by order dated May 2, 2008.

Also on May 2, 2008, Intrado and AT&T, having been unable to reach an agreement on the proposed procedural schedule, separately filed proposed procedural schedules. On May 8, 2008, the Commission issued an *Order Setting Procedural Schedule*. On May 9, 2008, Intrado and AT&T filed their Joint Issues Matrix.

On May 23, 2008, AT&T filed the prefiled rebuttal testimony and exhibits of Patricia Pellerin and Jason Constable.

On June 3, 2008, Intrado filed the rebuttal testimony and exhibits of Thomas W. Hicks, Cynthia Clugy, John R. Melcher, and Carey F. Spence-Lenss.

On June 24, 2008, the Public Staff filed a Notice of Participation and Request for Service of Filings.

On July 1, 2008, Intrado and AT&T filed a Revised Joint Issues Matrix.

On July 15, 2008, AT&T filed a Motion to Admit J. Phillip Carver to Practice before the Commission; the Commission granted the Motion by order dated July 18, 2008.

On July 25, 2008, the Public Staff moved that the Commission issue an order requiring Intrado and AT&T to file a second revised joint issues matrix in order to reflect the parties' positions if the Commission adopted either the 9-state template interconnection agreement (9-state template) or the 13-state template interconnection agreement (13-state template) as the starting point in this proceeding. The Commission granted the Public Staff's Motion by Order dated July 28, 2008. On August 6, 2008, Intrado and AT&T filed a Second Revised Joint Issues Matrix.

Also on August 6, 2008, Intrado and AT&T filed orders of witnesses and estimates of cross-examination time. The Public Staff filed an estimate of cross-examination time on August 6, 2008.

The evidentiary hearing was held as scheduled on August 13, 2008.

On September 26, 2008, Mr. Craig Whittington, 911 and Special Projects Coordinator for the Guilford Metro 911, filed a letter with the Commission in this docket. Mr. Whittington stated that "the citizens of not just Greensboro and Guilford County, but all across North Carolina need a more robust emergency 911 system that serves all callers and competition among and of network service providers will ensure that the people of North Carolina are receiving the very best 911 and most cost efficient 911 network service support possible." Mr. Whittington stated that he personally supports open 911 competition in North Carolina.

After receiving an extension of time, on October 10, 2008, Intrado, AT&T, and the Public Staff filed their Post-Hearing Briefs and/or Proposed Orders in this matter.

On December 8, 2008, Intrado filed as Supplemental Authority a copy of a decision by the Indiana Regulatory Utilities Commission.

On December 10, 2008, AT&T filed as Supplemental Authority a copy of a decision by the Florida Public Service Commission.

On January 9, 2009, Intrado filed as Supplemental Authority a copy of its Motion for Reconsideration filed with the Florida Public Service Commission and a copy of AT&T's response to the Motion for Reconsideration filed in Florida.

On March 5, 2009, Intrado filed as Supplemental Authority a decision issued by the Ohio Public Utilities Commission on March 4, 2009 in its Intrado/AT&T Ohio arbitration proceeding.

On March 6, 2009, AT&T filed as Supplemental Authority: (1) the Florida Public Service Commission Staff's February 19, 2009 recommendation on Intrado's Motion for Reconsideration; (2) the Florida Public Service Commission's March 3, 2009 vote sheet approving Staff's recommendation that Intrado's Motion for Reconsideration be denied; and (3) the Proposed Arbitration Decision in the Illinois Commerce Commission's docket established to consider the identical relief sought by Intrado in the instant docket.

On March 9, 2009, Intrado filed additional Supplemental Authority. Specifically, Intrado noted that the Proposed Arbitration Decision from the Illinois Commerce Commission filed by AT&T in this docket on March 6, 2009 is a recommended administrative law judge decision that remains subject to review and revision by the full Illinois Commerce Commission. Intrado filed a copy of its written exceptions and reply exceptions filed with the Illinois Commerce Commission. Intrado noted that a final

decision from the full Illinois Commerce Commission is expected either March 17 or March 25, 2009.

On March 17, 2009, AT&T filed a Notice of Supplemental Authority which included two recent orders by state commissions, including: (1) an order by the Florida Public Service Commission denying Intrado's Motion for Reconsideration; and (2) the Illinois Commerce Commission's Arbitration Decision finding that Intrado is not entitled to interconnect with AT&T Illinois under Section 251.

A glossary of the acronyms referenced in this *Order* is attached as Appendix A.

Based on the foregoing and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. Intrado seeks to provide competitive 911/E911 service to public safety answering points (PSAPs) and other public safety agencies in North Carolina.

2. The services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. AT&T is also required to offer interconnection as to any other telephone exchange service or exchange access service Intrado may offer.

3. The ICA should contain rates in instances when AT&T is the 911 service provider to the Public Safety Answering Point (PSAP) and when Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 and that part of scenario 3 pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, AT&T should resume negotiations and include any agreement in the composite agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.

4. AT&T's 9-state template is not the appropriate starting point for negotiations. The 13-state template is the appropriate starting point for negotiations for the parties in this proceeding. Based on the recent release of the 22-state template, if the parties agree, they may choose to use the 22-state template instead of the 13-state template since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

5. The additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 should not be adopted. The clarifying language proposed by Intrado in Appendix OET Section 1.4 should be adopted. The language in Appendix ITR Section 4.2 should be adapted to conform to competing local provider (CLP) trunking obligations in the 9-state region.

6. AT&T's proposed primary/secondary routing system should be used to handle 911 traffic in a split wire center. The primary selective router should be determined by which selective router is assigned to the PSAP that serves the majority of access lines in the wire center.

7. The ICA should require Intrado to establish trunking to the appropriate Point of Interconnection (POI) on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

8. AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T.

9. The parties may negotiate and establish multiple POIs, or different POIs for different types of services.

10. AT&T must allow Intrado to interconnect at a technically feasible point on AT&T's network when Intrado seeks to interconnect with AT&T's network as prescribed by Part 51.305 in the Federal Communication Commission (FCC) rules.

11. The Commission will not mandate any language in the ICA regarding meet point, but the parties are free to negotiate meet point locations, if agreed upon.

12. The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other incumbent local exchange companies (ILECs) in North Carolina. In addition, automatic number identification (ANI) and automatic location identification (ALI) information that was initially transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.

13. Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and AT&T should be required to use Intrado's designated ordering process to obtain services from Intrado.

14. The ICA should include the terms and conditions proposed by AT&T to address separate implementation activities for interconnection arrangements after the execution of the ICA.

15. It is not appropriate to include Intrado's proposed language in Section 3.4.3 of Appendix 911 concerning the interoperability of ALI. Intrado and AT&T can review the other proposals outlined by the Public Staff in its Proposed Order and negotiate changes to Section 3.4 and/or Section 5.4 as they deem appropriate.

16. The ICA should not define a 911/E911-Trunk as a trunk from AT&T's End Office.

17. The parties should modify the definitions of Section 251(b)(5) Traffic, ISP-Bound Traffic, Switched Access Traffic in the General Terms and Conditions (GTC) section and the appendices to comport with current FCC decisions and orders and to be consistent with the Commission's understanding of those decisions and orders. Also, the Appendix Intercarrier Compensation (IC) and Appendix ITR should retain the references to "wireline" and "dialtone" service.

18. Language specifying the actions to be taken to remove misrouted Switched Access traffic is appropriate for inclusion in Section 16.2 of Appendix C of the parties' ICA. Also, the blocking of switched access traffic should not be included in the ICA as an option.

19. The ICA should permit the retroactive application of charges that are not prohibited by an order or other change in law.

20. Matrix Issue No. 18 concerning the term of the ICA and notification for a successor ICA has been resolved and the parties have agreed to use the language negotiated in Ohio concerning this issue.

21. Matrix Issue No. 20 concerning the appropriate terms and conditions regarding billing and invoicing audits has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 20.

22. Matrix Issue No. 22 concerning Intrado's ability to assign the ICA to an affiliated entity has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 22.

23. Matrix Issue No. 23 concerning individual case basis pricing for specific administrative activities has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 23.

24. AT&T may limit its liability for damages caused by unintentional or negligent acts or omissions, but not for liability for willful, wanton, or intentional acts or omissions.

25. The word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person".

26. Matrix Issue No. 25 concerning late payments has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 25.

27. Reciprocal compensation should be rounded up to the next whole minute, and airline mileage should be rounded up to the next whole mile.

28. AT&T's proposed language for Appendix Pricing Section 1.9.1 and Section 1.9.2 concerning non-recurring charges is appropriate and should be adopted for inclusion in the interconnection agreement.

29. Matrix Issue No. 33 concerning providing unbundled network elements (UNEs) at parity has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 33.

30. It is appropriate to use the language in Section 2.22 of the Physical Collocation Appendix concerning non-standard collocation requests from the 13-state template without the additional language proposed by Intrado.

31. Matrix Issue No. 35 concerning references to applicable law has been resolved and the parties have agreed to use the language negotiated in Ohio concerning this issue.

32. If a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

ISSUE NO. 1 - MATRIX ISSUE NO. 1(a): What service(s) does Intrado currently provide or intend to provide in North Carolina?

ISSUE NO. 2 – MATRIX ISSUE NO. 1(b): Of the services identified in Issue No. 1(a), which, if any, is AT&T required to offer interconnection under Section 251(c) of the Act?

POSITIONS OF PARTIES

INTRADO: Intrado's 911/E911 service to North Carolina PSAPs falls within the definition of "telephone exchange service" pursuant to the Act. Intrado is therefore entitled to interconnect with AT&T pursuant to Section 251(c) for the purpose of providing 911/E911 services to North Carolina PSAPs.

AT&T: The emergency service that Intrado intends to provide does not comply with the definition of "telephone exchange service" contained in the Act. Intrado therefore is not entitled to an interconnection agreement pursuant to Section 251. Hence, Intrado's petition should be denied in its entirety.

PUBLIC STAFF: Intrado intends to provide telephone exchange service to PSAPs and other public safety agencies in North Carolina. AT&T is required to offer interconnection under Section 251(c) of the Act to Intrado for telephone exchange service to the PSAPs and other public safety agencies in North Carolina and any other telephone exchange service or exchange access Intrado may offer.

DISCUSSION

Since Matrix Issue Nos. 1(a) and 1(b) are closely intertwined, the Commission will consider them together. Taken as one, they represent the threshold question in this docket of whether Intrado is entitled to interconnection from AT&T under the Act. If the answer to Matrix Issue No. 1(b) is negative, then the arbitration cannot proceed; but if the answer is positive, then the arbitration should proceed.

Strictly speaking, Matrix Issue No. 1(a) simply poses the question of what services Intrado provides or intends to provide. There was no substantial difference among the parties as to what those services were. Where the parties differ is the legal significance of these services for the purposes of allowing the interconnection of those services.

According to Intrado, it intends to provide a competitive 911/E911 service similar to the "telephone exchange communications service" or "Business Exchange Service" currently offered by AT&T to PSAPs in North Carolina in its retail tariff. Intrado noted that AT&T's own 911 tariff described its E911 service offering as a telephone exchange communications service. Intrado also said it intends to provide in the future a so-called Intelligent Emergency Network to allow it to provide automatic retrieval and delivery of information directly to PSAPs and other government agencies. Intrado represented that its network was designed to interoperate with existing legacy PSAP equipment but allows for much more capability once the PSAP migrates to newer technologies. Intrado emphatically asserted that the competitive 911/E911 services it intended to offer are telephone exchange services.

On cross-examination, Intrado witness Spence-Lenss agreed that the service Intrado intends to provide is limited to aggregating emergency 911 calls at Intrado's selective router and then routing those calls to PSAPs, and it is not Intrado's intention to serve the end-users who place the 911 calls. AT&T argued that Intrado's arrangement contemplates that the calls will always flow in only one direction, a view reinforced by Intrado witness Spence-Lenss' statement that Intrado's 911 trunks were to be one-way trunks. AT&T noted that Intrado witness Spence-Lenss had testified that Intrado does not contend that the service it will provide constitutes an exchange access service. Thus, AT&T identified the only question as being whether the service constitutes a telephone exchange service.

47 U.S.C. 153(47) defines telephone exchange service as follows:

> TELEPHONE EXCHANGE SERVICE—The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate telecommunications service.

AT&T contended that Intrado did not address part (A) in the presentation of its evidence; and that, in any event, Intrado could not meet the "within a telephone exchange" language of part (A) because wire centers and PSAP municipal boundaries do not mesh up. Furthermore, Intrado's proposed service does not allow for two-way traffic as required by part (B). This latter part is the nub of AT&T's argument.

This is a case of first impression in North Carolina. There is no clear precedent from the FCC or the courts on the precise question of whether interconnection for the purpose of exchanging 911/E911 traffic constitutes telephone exchange service or exchange access service pursuant to Section 251(c)(2)(A) of the Act.[1] Two relatively recent decisions by state utility commissions reached differing conclusions on the matter.[2] Earlier decisions found generally in Intrado's favor.[3] As is common with the

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[1] Section 251(c)(2)(A) of the Act provides that the ILEC must interconnect "for the transmission and routing of telephone exchange service and exchange access."

[2] For example, the Florida Public Service Commission (FPSC), *In Re: Petition by Intrado Communications, Inc. for Arbitration of Certain Rates, Terms and Conditions for Interconnection and Related Arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Docket No. 070736-TP, Order No. PSC-08-0798-FOF-TP, Final Order (Issued December 3, 2008) ruled that Intrado's proposed service did not meet the definition of "telephone exchange service" under 47 U.S.C. 153(47) (at page 5). Intrado filed a Motion for Reconsideration on December 18, 2008. The FPSC affirmed that decision on February 19, 2009. The Indiana Regulatory Commission, *In the Matter of the Complaint of Communications Venture Corporation d/b/a Indigital Telecom Against Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems Concerning the Refusal of Verizon to Allow Connection of Indigital's Wireless Enhanced 911 Telephone System Serving Public Safety Answering Points and Indigital's Request for the Indiana Utilities Regulatory Commission to Order the Connection Under Reasonable Terms, Conditions and Compensation,* Final Order, Cause No. 43277 (Approved November 20, 2008) found that a private, commercial agreement between Verizon and Indigital Telecom was an interconnection agreement subject to Section 252 requirements and that the agreement "contains precisely the types of information typically contained in 47 U.S.C. 252 agreements: selective routing of traffic, purchase of trunks, port charges and terms of compensation among others." (at p. 9). Also, see *Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Case No. 08-545, issued February 13, 2009, Proposed Arbitration Order (Intrado's proposed services fall under neither 47 U.S.C. 153(47)(A) or (B)).

introduction of new types of services — in this instance, *competitive* emergency services — decision-making bodies have struggled in their efforts to properly classify them. While the Act was passed only a little over a decade ago, this is a lifetime in the further development and evolution of telecommunications services. The Commission must therefore reach a conclusion based on its own best judgment of the law.

In the arbitration AT&T argued that, since Intrado was proposing to use one-way trunking, Intrado could not provide the two-way traffic required by 47 U.S.C. 153(47)(B). However, the first thing that should be noted about 47 U.S.C. 153(47) is that it is written in the disjunctive—that is, if either part (A) or part (B) of the definition is satisfied, then such service is a "telephone exchange service." While the provisions of 47 U.S.C. 153(47) are less than perfectly lucid, at least on first reading, the parts can be understood by breaking them down in the following manner. Under Part (A) a "telephone exchange service" must (1) furnish subscribers intercommunicating service, (2) be within a telephone exchange or within a connected system of telephone exchanges within the same exchange areas, and (3) be covered by an exchange service charge. Alternatively, a "telephone exchange service" under Part (B) must be (1) a comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof), (2) originate and terminate a telecommunications service, and (3) provide subscribers the ability to intercommunicate. The common feature of these two Parts is "intercommunication," either explicitly as in (A) or implicitly by reference to "comparable service" and "originate and terminate" as in (B). "Intercommunication" is not separately defined in the Act, nor is it exactly a term of art. The FCC in the *Advanced Services Order* stated, somewhat unhelpfully for our immediate purposes, that the requirement is satisfied "as long as it provides customers with the capability of intercommunicating with other subscribers."[4] More to the point, however, the *Webster's New World Dictionary,* Second College Edition (1972), defines "intercommunicate" simply as "to communicate with *or to* each other or one another." (Emphasis added). This definition implies that an

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[3] See, for example, California Decision No. 01-09-048, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications,* Opinion Affirming Final Arbitrator's Report and Approving Interconnection Agreement (C.P.U.C., September 20, 2001) (agreeing with Arbitrator that SCC Communications Corporation, now Intrado, was providing "telecommunications services" and its services meet the definition of "telephone exchange service" by enabling subscribers to intercommunicate with a telephone exchange.). See, also, Ohio Case No. 07-119-TP-ACE, *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio,* Finding and Order (Ohio P.U.C., February 5, 2008), Para. 7. (The Ohio P.U.C. created a separate category of "competitive emergency services telecommunications carriers," to which it said Intrado belonged. Although not discussing 47 U.S.C. 153(47) directly, the Ohio PUC found that "Intrado is a telecommunications carrier engaged in the provision of telephone exchange service pursuant to Section 251 of the 1996 Act," although "its telephone exchange activities are restricted in scope and, thus, do not extend to the level of a CLEC." Ohio reinforced its conclusion that Intrado's proposed service qualified as telephone exchange service under both 47 U.S.C. 153(47)(A) and (B) in its Arbitration Award in Case No. 07-1280-TP-ARB (issued March 4, 2009) (*Ohio Arbitration Award*).

[4] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd 385,* Para. 17 (1999) (*Advanced Telecommunications Capability Order*).

intercommunication can include a situation in which one person delivers a message to another even if the other person does not or cannot reply.

In construing 47 U.S.C. 153(47), it is important to note that the FCC has been expansive in its definition of telephone exchange services. In the *Advanced Telecommunications Capability Order,* it has found that telephone exchange service is not only traditional voice telephony, but also includes "non-traditional means of communicating information within a local area." Also, in the *Advanced Telecommunications Capability Order,* Para. 21, the FCC found that even if "the transmission is a data transmission rather than a voice transmission . . . such transmissions nevertheless constitute telephone exchange service." Notably, the FCC has also found in the *DA Call Completion Order* that telephone exchange service included call-completion services offered by competing directory assistance providers.[5] In that case, the FCC engaged in an analysis of 47 U.S.C. 153(47)(A) and (B). With respect to 47 U.S.C. 153(47)(A), the FCC stated that "the call-completion service offered by many competing DA [directory assistance] providers constitutes intercommunication because it permits a community of interconnected customers to make calls to one another in the manner prescribed by the statute." (*Id.,* Para. 17) Thus, while noting that a DA provider's offer of call completion was not "traditional provision of telephone exchange service through the provision of dial tone," the FCC reasoned that it permitted "intercommunication" within the meaning of 47 U.S.C. 153(47)(A). (*Id.,* Para. 18) The FCC also agreed that call completion met the requirements of 47 U.S.C. 153(47)(B) because it allowed the "calling party the ability 'through the system of switches, transmission equipment, or other facilities (or combination thereof)' to originate and terminate a telecommunications service." (*Id.,* Para. 20) The FCC observed that 47 U.S.C. 153(47)(B) was added to "ensure that the definition of telephone exchange service was not limited to traditional voice telephony, but including non-traditional means of communications within a local calling area."

Moreover, the FCC has even gone so far as to require local exchange companies "to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251(a) and (c) and section 271(c)(2)(B)(vii) of the Act." The FCC continued: "We expect that this would include all the elements necessary for telecommunications carriers to provide 911/E911 solutions…."[6] These pronouncements suggest strongly that the language 47 U.S.C 153(47) should be given a liberal interpretation that furthers the purpose of telecommunications competition.

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[5] *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended,* 16 FCC Rcd 2736 (2001).

[6] *E911 Requirements for Internet Protocol (IP)-Enabled Service Providers,* 20 FCC Rcd 10245, Para. 38 (2005). See also *id.*, n. 128; and 47 U.S.C. 271(c)(2)(B)(vii)(I) (requiring Bell Operating Companies to provide nondiscriminatory access to 911 and E911 service to other telecommunications carriers)

The Commission also notes with approval the reasoning set forth in the *Ohio Arbitration Award.* In that Order, the Ohio PUC found that Intrado's 911 service involved intercommunication, albeit limited, but noted that 47 U.S.C. 153(47)(A) "does not quantify intercommunication. It only requires the existence of intercommunication." (at 15) Furthermore, it rejected AT&T's argument that exchange boundaries must be coterminous with ILEC exchange boundaries. "PSAPs must have a service that takes into account the location of fire, police, and other emergency service providers within the county that it serves. Although the reach of a particular 911 service may not coincide with the boundaries of ILEC exchanges, the service does have geographical limitations that are generally consistent with a community of interest."[7] Turning to the question of whether Intrado's service also falls under 47 U.S.C. 153(47) (B), which requires that a carrier both originate and terminate calls, the Ohio PUC noted that "as with 'intercommunicating', the statute does not quantify 'originate'." (at 16) The Ohio PUC thus concluded that the capability of a PSAP to call another PSAP and engage in two-way communications with 911 callers satisfies the call origination and termination requirement. We find the Ohio PUC's reasoning and analysis to be persuasive. Thus, for the reasons stated by the Ohio PUC, we, too, reject the arguments made by AT&T that Intrado's proposed service does not constitute telephone exchange service.

Lastly, it should be noted that AT&T witness Pellerin admitted on cross-examination that AT&T's own E911 tariff described its offering as a "telephone communications service", a classification that Intrado argued is comparable if not identical to telephone exchange service. As for one-way traffic, witness Pellerin also admitted that AT&T had entered into an interconnection agreement with a *one-way* paging company that regarded one-way paging as local traffic. AT&T has attempted to argue that these "examples" have simply been misclassifications or mistakes on AT&T's part and should not affect the construction of the definition of "telephone exchange service" in 47 U.S.C. 153(47) in this proceeding. We disagree. In our opinion, it is highly relevant and instructive that, at a point when AT&T was not anticipating this docket, AT&T itself has treated 911/E911 service or other services with similar characteristics as telephone exchange services. AT&T's previous behavior, combined with the expansive way the FCC has interpreted related matters, suggests that the better interpretation of 47 U.S.C. 153(47)(A) and (B) is that competitive 911/E911 services, such as those to be offered by Intrado, are included in those definitions[8]. In any event, the provision is written in the disjunctive, so satisfaction of (A) **or** (B) is sufficient to satisfy the statute.

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[7] The Ohio PUC also noted that Commercial Mobile Radio Service (CMRS) providers enter into Section 251 agreements even though they provide service in areas not coterminous with ILEC exchange boundaries. (at 16)

[8] AT&T's objection that Intrado could not comply with the "within a telephone exchange, or within a connected system of telephone exchanges within the same exchange" language because wire centers do not necessarily mesh up with municipal boundaries is not particularly persuasive. It fails to take into account the existence of extended area service (EAS), not to mention extended local calling areas (ELCA) or the fact that competing local providers are not formally bound to adopt the ILECs' local exchange boundaries for themselves.

Accordingly, the Commission concludes that Intrado intends to provide telephone exchange service as defined in both 47 U.S.C. 153(47)(A) and (B) to PSAPs and other public safety agencies in North Carolina. As such, it is not required to offer additional services for it to be deemed to offer telephone exchange service. Intrado is therefore a telecommunications carrier engaged in the provision of telephone exchange service pursuant to Section 251 of the Act.

CONCLUSIONS

With respect to Matrix Issue No. 1(a), the Commission concludes that Intrado seeks to provide competitive 911/E911 services to PSAPs and other public safety agencies in North Carolina.

With respect to Matrix Issue No. 1(b), the Commission concludes that the services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. AT&T is also required to offer interconnection as to any other telephone exchange service or exchange access service Intrado may offer.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

ISSUE NO. 3 – MATRIX ISSUE NO. 1(c): Of the services identified in Matrix Issue No. 1(a), for which, if any should rates appear in the ICA?

ISSUE NO. 4 - MATRIX ISSUE NO. 1(d): For those services identified in Matrix Issue No. 1(c), what are the appropriate rates?

POSITIONS OF PARTIES

INTRADO: The rates proposed by Intrado to facilitate AT&T's connection to Intrado's network are reasonable and should be included in the parties' ICA. Intrado should not be subject to rates developed outside of the Section 251/252 process.

AT&T: If Intrado is entitled to a Section 251 agreement, the appropriate rates are those proposed by AT&T, which should be applied on a reciprocal basis.

PUBLIC STAFF: The ICA should contain rates in instances in which AT&T is the 911 service provider to the PSAP and those in which Intrado is the 911 service provider to the PSAP. When Intrado and AT&T each serve a different PSAP and transfer calls between themselves, the ICA need not contain rates for this direct trunking interconnection.

DISCUSSION

These issues were addressed by Intrado witnesses Spence-Lenss and Hicks and by AT&T witness Pellerin.

Intrado contended that the ICA with AT&T should include a pricing appendix that sets forth the prices to be charged by AT&T for services, functions, and facilities to be purchased in connection with the parties' interconnection arrangements in North Carolina. It also proposed rates for AT&T to pay to interconnect with Intrado.

In AT&T witness Pellerin's discussion of the sub-parts of Matrix Issue No. 1, she set forth three different rate scenarios that would arise together with AT&T's position as to how the services would be priced under each scenario. The three scenarios are:

1. When AT&T is the 911 service provider to the PSAP.

2. When Intrado is the 911 service provider to the PSAP.

3. When Intrado and AT&T each serve a different PSAP and transfer calls between each other.

With respect to the first scenario, AT&T has agreed to include terms and conditions for such interconnection and any related Section 251 rates in the ICA unless Intrado chooses to obtain facilities through AT&T's access tariff.

With respect to the second and third scenarios, AT&T contended that it is not required by Section 251(c) of the Act to offer those arrangements, although it is willing to negotiate a commercial agreement with Intrado to do so. If the Commission nevertheless requires AT&T to offer terms and conditions for these two scenarios, AT&T has proposed sections in Appendix 911. AT&T does not believe that rates to be paid to Intrado by AT&T should be included in the ICA.

The Commission believes that there is no dispute as to Scenario 1 in which AT&T has agreed to include terms and conditions for such interconnection and any related Section 251 rates in the ICA unless Intrado chooses to obtain facilities through AT&T's access tariff.

As for Scenario 2, Intrado is the 911 service provider to the PSAP, and thus AT&T would be required to seek interconnection with Intrado for the completion of AT&T's customers' emergency service calls to the PSAP. This is simply the reverse of Scenario 1. Here AT&T's interconnection with Intrado would be pursuant to Section 251(a).

Scenario 3, where an AT&T PSAP and an Intrado PSAP wish to be able to transfer calls between one another, involves trunks between a PSAP served by an AT&T selective router and a PSAP served by an Intrado selective router, in which case the public switched network would not be involved in the transfer of these calls. This creates a mixed situation, in which AT&T's interconnection would arise from Section 251(a) in the case of AT&T-to-Intrado and from Section 251(c) in the case of Intrado-to-AT&T.

There is a division of authority as to the outer limits of matters on which incumbents are obliged to negotiate and state commissions are to rule. The Commission notes that the more restrictive view is that incumbent carriers must negotiate only as to issues arising under Sections 251(b) and (c) *See*, e.g., *MCI Telecommunications Corporation v. BellSouth Telecommunications*, 298 F.3d 1269 (Eleventh Circuit, July 26, 2002) (unlimited issues contrary to scheme and text of statute, which lists only a limited number of issues incumbents must negotiate).[9] The broader view is that, where parties have voluntarily included in negotiations issues other than those pertaining to duties required of an incumbent, such issues can be decided through compulsory arbitration under Section 252(b)(1). *See*, e.g., *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (Fifth Circuit, November 21, 2003) (jurisdiction of PUC not limited by terms of Sections 251(b) and (c) but by the actions of the parties in voluntary negotiations). In the instant case, the parties have voluntarily negotiated as to all three scenarios, and the Commission will arbitrate them accordingly.

While the Commission has concluded that it has the authority to arbitrate as to all three scenarios, and it is clear that rates arising under Section 251(c) must be included in the ICA, it is less clear whether the rates arising under Section 251(a) must also be included in the ICA. However, since the parties have presented these issues for our decision and we have the authority to arbitrate the issues, it would be administratively efficient for the parties to include Section 251(a) rates in the ICA.

As to the question of the appropriate rates, the Commission notes that, while the overall record in this docket regarding this issue is relatively sparse, Intrado did concisely set forth its general position on the matter in the August 6, 2008 Revised Joint Issues Matrix. Intrado's Matrix Issue No. 1(d) position statement referred back to language in its position statement concerning Matrix Issue No. 1(c) in pertinent part as follows:

> Intrado Comm's interconnection agreement with AT&T should include the pricing appendix typically approved by the Commission for AT&T North Carolina interconnection agreements that sets forth the prices to be charged by AT&T for services, functions and facilities to be purchased in connection with the Parties' interconnection arrangements in North Carolina.

Intrado qualified this statement with reference to proposed rates for AT&T's interconnection to Intrado's network, such as port termination charges, when Intrado has been designated as the 911/E911 service provider. Intrado stated that its charges would apply to any carrier seeking to connect to Intrado's network (therefore not being "commercial agreements") and represented that the "charges proposed by Intrado

[9] Interestingly, the Eleventh Circuit also held in this case that the specific provision requested by MCI also fell within Section 252(b)(4)(C), which provides that the state commission must resolve an issue if resolution is necessary to implement the terms of the agreement under Section 252(c).

Comm are similar to the [rates] imposed by AT&T for interconnection to AT&T's network."

AT&T responded that Intrado's rates were actually those of a "commercial agreement" and that AT&T should not have to pay Intrado commercial rates for interconnection while Intrado enjoys TELRIC rates from AT&T. AT&T urged, as a general matter, that Intrado's ICA rates to AT&T should not exceed AT&T's ICA rates to Intrado for reciprocal services. Furthermore, parties should only charge for services provided.

The Public Staff did not discuss the question of rates to be charged but confined its discussion to what services ought to be includable in the ICA under the various scenarios.

Given these representations by Intrado and AT&T in the Revised Joint Issues Matrix and the paucity of other evidence in the record, the Commission can only conclude that there is no disagreement as to the application of AT&T's rates involving Intrado's interconnection with AT&T but that there is a disagreement where AT&T interconnects with Intrado. The pertinent question at this point is what standard should apply to such rates.

It is perhaps inevitable that, as the Act enters its thirteenth year and competitive entry reaches further than the "garden variety" CLP-to-ILEC arrangement, the Commission would be faced with a novel situation. After all, the common situation is that the requesting carrier seeks to interconnect with the ILEC but not *vice versa*. Section 252 of the Act does not directly address ILEC-to-CLP interconnection arising out of Section 251(a). In the absence of such guidance, the Commission believes that the more general guide in such situations is one of "reasonableness" within the context of due recognition of the rights and obligations of each party.

In practical terms, Intrado's main concern appears to be centered on rates for access ports. Intrado noted in its Proposed Order that the Ohio PUC had recently determined that Intrado's rates for access ports (or "termination") on its network were "reasonable" and "not beyond the range of other companies." Intrado also observed that it was under no obligation to limit its rates to those charged by AT&T or comply with the other standards of the Act relating to rates. AT&T, as noted before, objected to being subject to what is viewed as commercial rates, noted that its rates were subject to TELRIC constraints, and urged that its rates be accepted as reciprocally applicable to both parties.

It is axiomatic that AT&T is subject to TELRIC rates. These rates have been validated and are acceptable to Intrado for Intrado-to-AT&T interconnection. By contrast, Intrado is not subject to TELRIC rates under the Act. Thus, the Commission has no basis in the record, other than Intrado's assertions and its citation to the Ohio PUC, to find that its proposed rates are in fact more reasonable than those of AT&T.

It may well be that the parties are not far apart in arriving at rates for AT&T-to-Intrado interconnection. The Commission therefore concludes that good cause exists to ask AT&T and Intrado to resume negotiations on this matter and to include any agreement in the Composite Agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.

As for the rates pertaining to Scenario 1 and that part of Scenario 3 pertaining to Intrado-to-AT&T interconnection, these arise under Section 251(c) and shall be the proposed AT&T rates.

CONCLUSIONS

The Commission concludes that the ICA should contain rates in instances when AT&T is the 911 service provider to the PSAP and when Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 and that part of Scenario 3 pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, AT&T should resume negotiations and include any agreement in the composite agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

ISSUE NO. 5 – MATRIX ISSUE NO. 2: Is AT&T's 9-state template interconnection agreement the appropriate starting point for negotiations? If not, what is?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should use the 13-state template they have already negotiated and revised. Intrado asserted that AT&T has offered no valid reason for not using that agreement in North Carolina. Intrado maintained that AT&T's refusal is even more egregious given its development of the 22-state template[10], which contains many of the 13-state provisions at issue between the parties. Intrado opined that there is no need for the parties to renegotiate language they have already resolved in their Ohio negotiations.

AT&T: AT&T asserted that its 9-state template was specifically designed for use in the 9-state (former BellSouth) territory, including North Carolina. AT&T maintained that, in contrast, the 13-state template, which was designed for use in AT&T's 13-state (former SBC) territory, does not address the network configuration or systems in use in North Carolina. AT&T argued that the Commission should determine that the 9-state template is better suited for an interconnection agreement in North Carolina. AT&T finally noted that, in the alternative, the parties may mutually agree to utilize AT&T's 22-state

[10] The 22-state template was released by AT&T on July 1, 2008.

template, which was released in July 2008 and was also designed for use in North Carolina.

PUBLIC STAFF: The Public Staff stated that, as many of the outstanding issues appear in the 13-state template and not in the 9-state template, the 13-state template should be used as a basis for an interconnection agreement between the parties. The Public Staff recommended that, if the parties agree, the Commission should conclude that the parties may instead choose to use the 22-state template since it appears now to be the standard template for the combined BellSouth/SBC legacy regions.

DISCUSSION

Intrado witness Spence-Lenss stated in her rebuttal testimony that Intrado will accept state-specific requirements, which are typically delineated in state-specific appendices. Witness Spence-Lenss noted that, however, the general terms and conditions and the majority of technical issues should be the same regardless of jurisdiction.

Witness Spence-Lenss further noted that Intrado has asked AT&T on numerous occasions to identify those portions of the 13-state template that would need to be modified for use in North Carolina. Witness Spence-Lenss stated that, other than general assertions about operational support systems (OSS), pricing, performance standards, and UNEs, AT&T has not provided specific information to Intrado. Witness Spence-Lenss testified that any necessary modifications could easily be addressed through the inclusion of additional appendices to the already agreed-upon terms.

Witness Spence-Lenss stated that Intrado has reviewed the 9-state template, but that the review was not thorough and its initial revisions did not reflect the arrangements that Intrado needs to provide competitive 911 service offerings in North Carolina. She maintained that, ultimately, if the Commission orders the use of the 9-state template, Intrado would be left with an interconnection agreement that it did not have the opportunity to review, comment on, or negotiate, and that does not reflect the arrangements Intrado needs to offer competitive service to PSAPs in North Carolina. She argued that this is very much a substantive issue.

Intrado maintained in its Proposed Order that the Commission should find that the parties must utilize the interconnection agreement template that the parties have spent a significant time reviewing, negotiating, and revising in connection with their Ohio negotiations. Intrado noted that the parties have already negotiated and reached agreement on many of the outstanding issues before the Commission and asserted that AT&T has provided no valid reason for not continuing to use that set of documents in North Carolina. Intrado argued that it has no obligation to negotiate an interconnection agreement based on the templates produced by AT&T.

Intrado asserted that AT&T has recognized the benefit of system-wide uniformity in other proceedings. Intrado maintained that, despite Intrado's repeated requests,

AT&T has provided no reason, technical infeasibility or otherwise, for not using the documents the parties have negotiated and agreed to use in Ohio. Intrado stated that it sees no reason for the parties to negotiate new generic provisions for use in North Carolina when the parties have already reached agreement on such provisions that are unaffected by jurisdictional boundaries. Intrado opined that this approach is practical and will ensure that consistent terms and conditions are used throughout Intrado's service territory to the greatest extent possible.

Intrado maintained that similar (and in some cases exact) language to that agreed-upon by the parties is contained in AT&T's new 22-state template. Intrado asserted that, given the similarities between the 13-state template and the 22-state template, AT&T should not have any issue using the interconnection agreement language already reviewed and revised by the parties in North Carolina, especially when neither the 9-state template nor the 13-state template is available on AT&T's website since its release of the 22-state template.

Intrado recommended that the Commission find that the parties should utilize the set of interconnection documents previously negotiated in connection with the parties' Ohio arbitration proceeding and that Intrado is not required to utilize AT&T's 9-state template as the starting point for negotiations.

Intrado stated in its Post-Hearing Brief that it requested a 22-state template from AT&T on at least three different occasions prior to filing its arbitration petition. Intrado further noted that, based on its very cursory review, it appears that some of the provisions at issue between the parties from the 13-state template are contained in the 22-state template. Intrado noted that, for example, it appears that the language in dispute under Matrix Issue Nos. 14(b), 21, 22, 31, 32, and 33 is contained nearly verbatim in the 22-state agreement. Intrado asserted that the 22-state template appears to be based on the 13-state template with the necessary modifications, revisions, and additions made to accommodate the former BellSouth region. Intrado noted that, although the 22-state template appears to have incorporated much of the 13-state template, Intrado's proposed language for inclusion in its North Carolina interconnection agreement with AT&T is the result of negotiated revisions to the 13-state template. Intrado stated that the parties have engaged in negotiations based on the 13-state template and exchanged proposed revisions to that template, which are the subject of this arbitration.

AT&T witness Pellerin stated in her rebuttal testimony that a Commission decision to utilize the 13-state template would require significant and time-consuming analysis of that template to identify language that must be changed for North Carolina – which would result in additional, but not yet identified, issues requiring arbitration. Witness Pellerin asserted that, additionally, the 13-state template is not the agreement that the parties started negotiating from in North Carolina, so it is not appropriate as a basis for this arbitration.

During cross-examination, witness Pellerin stated that AT&T invited Intrado to discuss or negotiate using the 9-state template. She also noted that Intrado later stated it was not going to look at the 9-state template. Witness Pellerin testified that she never participated in negotiations on the 9-state template, however, that such negotiations took place and that Intrado provided redlines to the 9-state template in October 2007. Witness Pellerin noted that Intrado then filed its arbitration petition using the 13-state template.

Witness Pellerin stated that AT&T invited Intrado to examine and engage in discussions with AT&T on the recent 22-state template, which Intrado did not do.

AT&T asserted in its Proposed Order that it advocates for use as a template agreement the 9-state template that it routinely makes available in North Carolina and that is adapted specifically for use in the 9-state region, including North Carolina. AT&T maintained that the 9-state template reflects the appropriate terms and conditions and network architecture for services AT&T offers in the 9-state region and accommodates the unique, state-specific legal and regulatory requirements, network, technical systems, operational systems, OSS, and policies for the former BellSouth region, including North Carolina.

AT&T argued that Intrado proposes to use the 13-state template, which was designed for use in the 13 AT&T states outside of the former BellSouth region, in this proceeding. AT&T maintained that the 13-state template has always been used in those 13 states and that no Commission has ever ordered the use of the 13-state template in any of the nine Southeast states. AT&T stated that the 13-state template has not been the basis for a voluntarily negotiated agreement between AT&T and any CLP in the 9-state Southeast region. AT&T noted that AT&T witness Pellerin testified that the 13-state template was designed for CLP interconnection agreements in AT&T's 13-state territory and does not accommodate the particular characteristics present in North Carolina.

AT&T maintained that it seems logical that a template specifically designed for use in North Carolina would be the better template. AT&T recommended that the Commission not order the use of a template agreement designed for use elsewhere in the absence of some compelling reason to do so, especially since Intrado has not offered any such reason. AT&T noted that Intrado witness Spence-Lenss, in her prefiled direct testimony, stated that Intrado desires a single agreement for the entire area served by AT&T; however, AT&T argued, Intrado offered no indication as to why it believes its desire for a single agreement should necessarily mandate the use of the 13-state template, rather than the 9-state template.

AT&T further noted that it has provided standard offerings and capabilities for the portions of the agreement that are most likely to apply to Intrado. AT&T stated that, specifically, it has negotiated with Intrado appendices identified as Appendix 911 and Appendix 911 NIM, which contain virtually all of the terms and conditions that relate specifically to the functionality Intrado seeks for the services it will provide to PSAPs.

AT&T asserted that, thus, it is offering a single set of uniform contractual provisions that relate to what Intrado will actually utilize from the interconnection agreement. AT&T noted that this means that the entire subject dispute is over what to use as the boiler plate in the agreement, i.e., the general terms and conditions and appendices unrelated to 911 services, most of which are unlikely to ever be used by Intrado. AT&T argued that, given this, it is difficult to understand why Intrado objects so strongly to using the 9-state template.

AT&T maintained that, even though the 9-state template was provided to Intrado almost a year ago, and the parties commenced and engaged in negotiations from this template, witness Spence-Lenss testified that Intrado has never conducted a thorough review of the agreement. AT&T asserted that, although Intrado obviously deems the 9-state template less suitable than the 13-state template, Intrado cites to no particular provision of the 9-state template it finds unsuitable.

AT&T argued that, in contrast, AT&T witness Pellerin testified specifically as to a number of ways in which the 13-state template would fail to properly function in the 9-state region. AT&T stated that some examples include:

- in the 13 state region, the parties have actual usage recordings from which to bill for non-911 traffic that the parties exchange. But in North Carolina, due to switch recording and billing limitations, non-911 traffic is billed based on percentage factors – an example would be 72% local and 28% toll. Parties apply these factors to a big bucket or buckets of minutes to create their intercarrier compensation bills;

- the way the trunk groups are defined and how traffic is routed is different between the states; and

- collocation is handled differently between the states.

AT&T noted that the fact that the 13-state template does not work in the 9-state region from an operational standpoint is not the only problem. AT&T asserted that also problematic is the fact that the use of the 13-state template would needlessly complicate both the agreement itself and the process of setting the terms of the agreement. AT&T stated that, in this regard, AT&T witness Pellerin testified that a decision that the parties must utilize the 13-state template in North Carolina would require several months or more to assess and would give rise to numerous additional issues that are, as yet, unidentified.

AT&T maintained that, to date, Intrado's request for the 13-state template has resulted in a number of disputed issues that are largely unrelated to the central legal and technical disputes between the parties. AT&T stated that many of the issues in this proceeding that remain unresolved relate specifically to disputes over language in the 13-state template that do not exist if the 9-state template is used. AT&T noted that, specifically, Matrix Issue Nos. 13(b), 15, 34(a), and 34(b) would become moot if the

Commission ordered the use of the 9-state template. AT&T maintained that use of the 9-state template would also avoid disputes over at least some of the language included in, and partially resolve, Matrix Issue Nos. 3, 4(c), 7(a), 10, 13(a), and 29(a).

AT&T noted that, finally, there are 11 issues in the proceeding that not only arise solely in the context of the 13-state template, but that have also been resolved in the context of that agreement during negotiations in Ohio; these issues are Matrix Issue Nos. 18(a), 18(b), 20, 22, 23, 25(a), 25(b), 25(c), 25(d), 33, and 35. AT&T stated that Intrado has requested that the Commission interject the negotiated language for these 11 issues into the 9-state template, even if the Commission selects the 9-state template rather than the 13-state template. AT&T recommended that the Commission decline to do so. AT&T argued that the 13-state template includes thousands of provisions, most of which are not in dispute. AT&T stated that these 11 issues pertain to language that was once in dispute, but has now been resolved; thus, these 11 issues currently have the exact same status as all of the other provisions in the 13-state template that were never in dispute. AT&T asserted that there is no reason for the Commission to treat these particular issues any differently from all of the other currently undisputed portions of the 13-state template. AT&T advocated that, instead, the Commission must make a decision to utilize either the 13-state template or the 9-state template. AT&T maintained that there is no basis to provide for special handling of the issues in the 13-state template that were once disputed, but are no longer in dispute.

AT&T further noted that it made its 22-state template available to CLPs on July 1, 2008 and that AT&T has agreed to utilize the 22-state template for Intrado's North Carolina interconnection agreement properly modified to reflect the outcome of issues presented for arbitration, as well as items previously resolved by the parties to the extent they are consistent with any technical, regulatory, and/or operational issues specific to the former BellSouth region. AT&T stated that it finds the 22-state template to be an acceptable alternative to the 9-state template provided both parties agree to its use.

AT&T recommended that the Commission order the use of the 9-state template and that, in the alternative, the parties may mutually agree to utilize AT&T's 22-state template. AT&T noted that acceptance of this recommendation would render moot Matrix Issue Nos. 13(b), 15, 34(a), and 34(b); portions of Matrix Issue Nos. 3, 4(c), 7(a), 10, 13(a), and 29(a) are effectively resolved as well. AT&T also recommended that the Commission decline to interject into the 9-state template the 11 issues resolved in Ohio for inclusion in the 13-state template. AT&T noted that this effectively resolves in favor of AT&T Matrix Issue Nos. 18(a), 18(b), 20, 22, 23, 25(a), 25(b), 25(c), 25(d), 33, and 35.

The Public Staff maintained in its Proposed Order that Intrado wants to use the 13-state template in North Carolina, on which it reached agreement with AT&T in Ohio, while AT&T wants to use its 9-state template, which it has used in negotiations in the former BellSouth region. The Public Staff noted that both parties contend that, if the Commission rules against them on this issue, it will take a substantial amount of time to

negotiate the subsequent interconnection agreement in order to adapt the template. The Public Staff stated that, on July 1, 2008, AT&T stopped offering the 9-state and 13-state templates and began offering a 22-state template. The Public Staff further stated that a template is merely a starting point for negotiations, the use of which can facilitate negotiations by establishing a framework for an interconnection agreement. The Public Staff asserted that the law does not require the use of a template at all or give either party the right to choose the template. The Public Staff stated that provisions can be added to, deleted from, or modified within the template and that Intrado and AT&T have negotiated many of these issues already in Ohio.

The Public Staff noted that AT&T has contended that a number of the issues raised by Intrado would need no resolution if the 9-state template is used because the issues do not arise in the context of the 9-state template. The Public Staff stated that, in the August 6, 2008 Joint Issues Matrix, Intrado contended that substitution of the 9-state template will not resolve the issues as contended by AT&T. The Public Staff asserted that, under Section 252(c) of the Act, the Commission is required to resolve each open issue set forth in the arbitration petition. The Public Staff stated that the issues raised by Intrado that AT&T contends would be settled by use of the 9-state template are valid and reasonable issues, and the Commission has the duty to resolve them. The Public Staff opined that many of the outstanding issues appear in the 13-state template and not in the 9-state template, and the Public Staff noted that many of these issues have been resolved in connection with the Ohio arbitration.

The Public Staff argued that, with the amount of time that has already been spent resolving issues pursuant to the 13-state template, the Commission should find that the 13-state template should be used as a basis for an interconnection agreement. The Public Staff further proposed that, if the parties agree, they should also be allowed to choose to use the 22-state template instead of the 13-state template since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

After reviewing the record on this issue, the Commission finds that the main area of contention is whether the 9-state template is a better starting place for negotiations since it addresses the network configuration or systems in use in North Carolina or the 13-state template which the parties have already negotiated and revised. The Commission notes that it appears that the new 22-state template would satisfy the concerns of both AT&T and Intrado. AT&T has stated that the 22-state template was designed for use in North Carolina which resolves its concerns that the 13-state template was not designed for use in North Carolina. And, apparently, the 22-state template maintains the revisions from the 13-state template that Intrado is interested in preserving.

However, the Commission notes that the 22-state template was released in July 2008 and that the record in this proceeding is based on the use of the 9-state template or the 13-state template. In addition, the Commission agrees with the Public Staff that, under Section 252(c) of the Act, the Commission is required to resolve each

open issue set forth in the arbitration petition. The issues set forth in Intrado's arbitration petition are structured based on the 13-state template only, and not on the 22-state template.

The Commission agrees with Intrado and the Public Staff that Intrado does not have any obligation to negotiate an interconnection agreement based on the templates produced by AT&T. Further, the Commission agrees with the Public Staff that a template is merely a starting point for negotiations, the use of which can facilitate negotiations by establishing a framework for an interconnection agreement, and that the law does not require the use of a template or give either party the right to choose the template.

Based on the record in this proceeding, the Commission concludes that AT&T's 9-state template is not the appropriate starting point for negotiations. The Commission finds that use of the 13-state template is the appropriate starting point for negotiations for the parties in this proceeding due to the amount of time that has already been spent resolving issues pursuant to the 13-state template. Further, based on the recent release of the 22-state template, the Commission concludes that, if the parties agree, they may choose to use the 22-state template instead of the 13-state template since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

CONCLUSIONS

The Commission, in its discretion, concludes: (1) that AT&T's 9-state template is not the appropriate starting point for negotiations; (2) that use of the 13-state template is the appropriate starting point for negotiations for the parties in this proceeding; and (3) that, based on the recent release of the 22-state template, if the parties agree, they may choose to use the 22-state template instead of the 13-state template since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

ISSUE NO. 6 – MATRIX ISSUE NO. 3: What trunking and traffic routing arrangements should be used for the exchange of traffic generally?

POSITIONS OF PARTIES

INTRADO: Intrado has proposed minor, clarifying revisions to AT&T's proposed language for Appendix 911 Section 9.1. AT&T objects to Intrado's revisions, but has not explained why. Intrado is not required to establish trunking to every tandem in a Local Access and Transport Area (LATA) or every originating office connected to a tandem as AT&T's proposed language requires. AT&T's Out-of-Exchange Appendix should not apply to 911/E911 traffic or inter-selective router traffic. Intrado has proposed language to clarify that the terms and conditions of that appendix do not apply to those types of traffic.

AT&T: In Appendix 911 Section 1.3, the Parties agree that approval is required from the E911 Customer for a Party to carry the customer's 911 traffic. AT&T's additional language properly captures the E911 Customer's ability to revoke its authorization. In Appendix 911 Section 9.1, AT&T proposes language which provides that the 911 Appendix applies to the provision of 911 service pursuant to Section 251. Intrado objects to this general language, but its reasons are unclear. Regarding non-911 traffic, in the 13-state ITR Section 4.2, Intrado has substituted the word "may" for "shall" where AT&T would ask a carrier to establish trunking to the correct tandem. (Similar language appears in 9-state Attachment 3 Interconnection.) Without a trunk group at these tandems, there is a possibility that there could be misrouted traffic or blocked calls. Intrado may never send public switched telephone network (PSTN) traffic anywhere, as it only wants to route 911 traffic, but the language AT&T proposes is important if it ever does (or if another CLP adopts Intrado's ICA). Intrado proposes language to exclude the exchange of 911 calls and inter-selective router (SR) calls from the Appendix Out-of-Exchange Traffic (OET). This language is unnecessary because the definition of out-of-exchange traffic in OET Section 1.4 already excludes 911 traffic.

PUBLIC STAFF: The additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 should not be adopted. The clarifying language proposed by Intrado in Appendix OET Section 1.4 should be adopted. The language in Appendix ITR Section 4.2 should be adapted to conform to CLP trunking obligations in the 9-state region.

DISCUSSION

Intrado stated that there is no justification for the inclusion of the addition made by AT&T in Appendix 911 Section 1.3 that a PSAP could revoke, condition, or modify its approval. Intrado asserted that carriers do not negotiate their ICAs based on customer approvals, but rather the services they want to market to the target customer base. Intrado stated that it needs to know that, if it markets call transfer capability to potential PSAP customers, its interconnection agreements will support selective router-to-selective router interconnection necessary to enable call transfers. Intrado contended that the language agreed to by both parties already ensures that PSAPs and E911 customers are part of the process, and there is no need for the additional language proposed by AT&T.

Intrado also argued that AT&T's language in Appendix ITR Section 4.2 requiring Intrado to establish trunking to each local tandem in a LATA, and in some cases trunking to each end office in a local exchange area, is unlawful. Intrado maintained that it is entitled to establish a single POI per LATA and is under no obligation to establish additional facilities beyond the POI.

AT&T disagreed with four contract provisions regarding general trunking that are unrelated to which carrier is providing service to the PSAP. In Appendix 911 1.3 AT&T proposed language that would permit an E911 customer to revoke the authorization of

either Party providing 911 service to the PSAP, if desired. AT&T stated that Intrado did not offer any support for its objection to AT&T's additional language.

AT&T stated that Intrado's proposed language revisions in Appendix 911 Section 9.1 reflect reciprocity in the provision of 911 services pursuant to Section 251 of the Act. AT&T stated that it acknowledges that it has certain obligations regarding access to 911 databases pursuant to Section 251, but it does not agree that Intrado's provision of 911 services is subject to Section 251. AT&T stated that its proposed language is general and not specifically tied to the provision of 911 services as an obligation under Section 251 of the Act. AT&T suggested that Intrado's position reflects reciprocity in the provision of 911 services pursuant Section 251 of the Act.

AT&T disagreed with Intrado's statement regarding non-911 traffic that it "is not required to establish trunking to every tandem in the LATA." AT&T contended that ITR Section 4.2 requires Intrado to establish a trunk group to each tandem where Intrado offers basic local exchange service. AT&T stated that, without a trunk group at tandems where Intrado offers local exchange service, there is a possibility for misrouted traffic or blocked calls.

Finally, AT&T noted that Intrado wanted to add language in OET Section 1.1 that was redundant to the definition of Out-of-Exchange Traffic in Appendix OET Section 1.4 which already excludes 911 traffic. AT&T commented that Intrado's proposed language to Appendix OET Section 1.1 to exclude the Parties exchange of 911/E911 service calls or the inter-selective router transfer of 911/E911 service calls was unnecessary.

The Public Staff's view was that the proposed language by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1, addressing the point at which the Parties agree that approval is required from the E911 customer for a party to carry the customer's 911 traffic is not needed in the agreement.

The Public Staff noted that Intrado had proposed to substitute the word "may" for "shall" where AT&T would be asking a carrier to establish end office and tandem trunking. The Public Staff stated that Intrado should not be required to establish trunking to every AT&T end office and tandem in a LATA. The Public Staff suggested that the parties should adapt the language in the agreement to clarify that Intrado is only required to establish trunking to the tandems and end offices that would be appropriate for a CLP operating in North Carolina.

The Public Staff also noted that Intrado wanted to add language to the definition of Out-of-Exchange Traffic in Appendix OET Section 1.1 to clarify that the OET Appendix does not apply to 911 traffic. The Public Staff observed that AT&T had argued that the language in the definition of Out-of-Exchange Traffic in Appendix OET Section 1.4 of the appendix already excludes 911 traffic. The Public Staff's view was that the additional language proposed by Intrado is necessary since the definition of OET does not clearly exclude 911 traffic.

After careful consideration, the Commission believes that the additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 should not be adopted. From the Briefs, arguments and testimony of the witnesses, both Parties agree that approval is required from the E911 Customer for a Party to carry the customer's E911 traffic. Therefore, the additional language is not necessary in the agreement.

The Commission also believes that the clarifying language proposed by Intrado in Appendix OET Section 1.4 should be adopted to clarify that Out-of-Exchange Traffic does not include 911/E911 traffic. The Commission is persuaded by Intrado's argument that the definition for Out-of-Exchange Traffic should explicitly state that 911 traffic is to be excluded.

The Commission further concludes that the language in Appendix ITR Section 4.2 should be adapted to conform to CLP trunking obligations in the 9-state region. Finally, the Commission concurs with the Public Staff that Intrado should not be required to establish trunking to every AT&T end office and tandem in a LATA. The Commission believes that the parties should adapt the language in the agreement to clarify that Intrado is only required to establish trunking to the tandems and end offices that would be appropriate for a CLP operating in North Carolina.

CONCLUSIONS

Accordingly, the Commission concludes that the additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 shall not be adopted. The clarifying language proposed by Intrado in Appendix OET Section 1.4 shall be adopted. The language in Appendix ITR Section 4.2 shall be adapted to conform to CLP trunking obligations in the 9-state region.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

ISSUE NO. 7 – MATRIX ISSUE NO. 3(a): What trunking and traffic routing arrangements should be used for the exchange of traffic when Intrado is the designated E911/911 service provider?

POSITIONS OF PARTIES

INTRADO: When an area is served by more than one public safety agency (only one of which would be Intrado's customer), Intrado's language would require AT&T to implement "line attribute routing" to ensure that only traffic destined for Intrado's PSAP customer is delivered to Intrado. Where it is technically infeasible for AT&T to sort its end users 911 call traffic at the associated originating office and where an originating office serves customers both inside and outside of Intrado's network serving area, it is best for AT&T and Intrado to work cooperatively with the affected governmental 911 authority to determine which 911 provider is best suited to sort the 911 traffic and hand-off calls to the other 911 provider as appropriate.

AT&T: When Intrado is the designated 911/E911 service provider, there are two general scenarios that will be addressed: (1) AT&T will establish direct end office 911 trunk groups to the Intrado SR for wire centers that are not split between PSAP jurisdictions; and, (2) AT&T will establish SR to SR trunk groups for wire centers that are split between PSAP jurisdictions. Intrado's insistence that AT&T should re-engineer its network in a way that would severely compromise network reliability in order to reduce Intrado's cost of doing business should be rejected.

PUBLIC STAFF: AT&T's proposed primary/secondary routing system should be used to handle 911 traffic in a split wire center[11]. The primary selective router should be determined by the selective router assigned to the PSAP that serves the majority of access lines in the wire center.

DISCUSSION

Intrado stated that when a CLP's customers receive emergency services from PSAPs that are served by the ILEC 911/E911 network, it is necessary for the CLP's switch to be configured to select the appropriate direct and redundant trunk group to the 911 selective router connected to the PSAP that is to respond to the CLP's 911 caller, as determined by the location of the caller. Further, in conjunction with direct trunking, such routing may be accomplished by setting the appropriate line attributes in the central office line database for each line during the service provisioning and automated recent line change processes. Intrado contended that this is similar to the way in which line attributes are established when an end user pre-subscribes to a long distance provider. Intrado stated that it refers to this technique as "line attribute routing."

Intrado argued that AT&T's proposal to use a common trunk group for all 911/E911 service traffic destined for Intrado's network is inconsistent with National Emergency Number Association (NENA)[12] recommendations. Intrado stated that the use of common transport trunk groups for all end office traffic makes it impossible for a PSAP served by Intrado to determine the originating carrier's end office and to take advantage of more robust traffic management capabilities. Intrado also argued that industry recommendations call for identifiable end office trunk groups for default routing.

Intrado stated that direct trunking to the selective router serving the PSAP provides the most reliable and redundant 911/E911 network, as evidenced by AT&T's use of direct trunking arrangements within its own network when it is the 911/E911 service provider. Intrado also stated that switching via AT&T's selective router is no longer necessary when Intrado is the designated provider, and inserting another stage

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[11] A split wire center is a wire center where there are PSAPs served by both AT&T and Intrado. A wire center boundary follows the local loop cable footprint serving a specific geographic area and may or may not overlap municipal jurisdictions.

[12] NENA is a US non-profit organization promoting 911 as a standard emergency number, including technical support, public awareness, certifications programs, and legislative representation. Newton's Telecom Dictionary, 17th Edition, February 2001.

of switching in the call processing path introduces the possibility of additional points of failure.

According to Intrado, North Carolina public safety entities must have assurances that 911/E911 service traffic destined to their first responders will be treated equally. Intrado pointed out that Congress and the FCC recognized that there are numerous operational barriers faced by competitors which require that all aspects of local services be available to all competitors on an equal basis. Thus, Intrado stated that Congress and the FCC determined that equal access was absolutely necessary for competition in the local market to survive. Intrado suggested that the routing technique that if proposed, direct routing to the selective router in conjunction with the use of line attribute routing, is similar to the equal access concept.

Intrado contended that 911 calls of all citizens should be routed using the most reliable process available – direct trunking to the selective router serving the PSAP. Intrado argued that AT&T's refusal to utilize direct trunking when Intrado is the designated 911/E911 service provider means that some AT&T customers' 911 calls (i.e., those calling a PSAP served by Intrado) will be treated differently than other AT&T customers' 911 calls (i.e., those calling a PSAP served by AT&T). Intrado believed that AT&T customers 911 calls should be treated in the same manner – directly trunked from the end office to the selective router serving the PSAP – regardless of who is the service provider for the PSAP or county.

Intrado stated that it has demonstrated that the use of direct trunking in conjunction with line attribute routing is technically feasible and that similar processes are in use today for the routing of long distance calls. Intrado argued that since it has demonstrated that its proposal is technically feasible, the burden shifts to AT&T to demonstrate, by clear and convincing evidence, that the proposal is not technically feasible or that specific and significant adverse impacts would result from Intrado's requested interconnection arrangement. Intrado maintained that AT&T has provided no demonstration that it is technically infeasible to utilize direct trunking and line attribute routing. Intrado stated that AT&T claimed that implementation of Intrado's proposal would impose some costs on AT&T, but when questioned, AT&T could not demonstrate the source of such information.

Intrado contended that AT&T's comparison of line attribute routing to "class marking" is inappropriate. Intrado stated that class marking involved data which is not validated by the Master Street Address Guide (MSAG)[13], while line attribute routing is based upon integration of MSAG data into AT&T's service provisioning. Intrado acknowledged that class marking earned a bad reputation for requiring manual procedures, which could lead to misapplication of tax codes and misrouted calls. Intrado stated that it is not requesting AT&T to use this type of class marking in providing 911/E911 call processing.

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[13] MSAG is a database containing the mapping of street addresses to Emergency Service Numbers within a given community. Newton's Telecom Dictionary, 17th Edition, February 2001.

Intrado acknowledged that its direct trunking and line attribute routing proposal would require AT&T to validate its end users' address information against the MSAG or AT&T's regional street address guide to ensure that an end user's 911/E911 calls are directed to the appropriate PSAP. Intrado stated that this would involve putting an attribute on the end user's line so that when the end user calls 911, the switch knows where to send the call. Intrado opined that this is no different than presubscription when the end user designates the long distance carrier to which its 1+ calls are to be directed.

Intrado also added that in actuality, the use of direct trunking in conjunction with line attribute routing would not require AT&T to create any new information because the process is based on obtaining the caller's street address information from the MSAG. Further, AT&T would use the MSAG information to establish the "attribute" to direct the 911 call to the appropriate PSAP which covers the caller's address.

AT&T noted Intrado's recommendation that the system that is currently used for routing should be replaced by the use of call sorting at the originating caller's switch. According to AT&T, this sorting is sometimes referred to as class marking and, at other times, as line attribute routing. AT&T contended that, by any name, Intrado has proposed a costly and completely unproven process.

AT&T stated that it has agreed to establish a direct trunk group to the Intrado selective router without providing any additional switching in a wire center in which all customers are served by a PSAP to which Intrado provides emergency services. In this instance, AT&T stated there is no need to use class marking or the current system of selective routing.

According to AT&T, the dispute in this issue is actually quite limited and relates to how AT&T end user 911 traffic will be routed when an AT&T end office serves PSAPs that are provided service by both AT&T and Intrado. AT&T's witness Constable explained that since PSAPs typically follow municipal or other governmental jurisdictions, a wire center may encompass the territory of two or more PSAPs that are served by different carriers (e.g., one by AT&T and one by Intrado), and thus are "split." AT&T maintained that it proposes to utilize selective routing to handle these situations for Intrado precisely as it currently does for other carriers.

Specifically, AT&T explained that a determination is made as to which carrier provides service to the PSAP that serves the majority of the customers in the wire center. The selective router of this carrier is designated as the Primary Selective Router. The selective router of the other carrier is designated as the Secondary Selective Router. Then, as witness Constable testified, "all calls from split wire centers would route to the Primary Selective Router, where a determination would be made via the Selective Router Database to route the call directly to a PSAP or deliver the call to the Secondary Selective Router for delivery to a PSAP." AT&T reiterated that the designation of a router as primary or secondary would be based entirely on which carrier serves the PSAP that provides 911 service to the majority of the end users in the wire center.

AT&T pointed out that Intrado witness Hicks testified that AT&T does not currently use line attribute routing in providing 911 service and that line attribute routing is superior to the method AT&T currently uses to route 911 calls. AT&T stated that, although witness Hicks cited nothing to support his view, the fact that Intrado advocates that the current system be discarded in favor of a new superior system creates an insurmountable legal impediment to Intrado's position. Specifically, AT&T noted that Section 251(c)(2)(C) requires the ILEC to offer interconnection that is at least equal in quality to that provided . . . to itself, or to any subsidiary, affiliate or any other party to which the carrier provides interconnection. AT&T stated that this is precisely what it has done when it offered to Intrado the same routing that it offers to other carriers.

Beyond the legal impediment to Intrado's argument, AT&T further contended that there is no record support for Intrado's assertion that line attribute routing is superior to the current system, or for that matter, even reliable. AT&T stated that there is no evidence to support any conclusion as to how line attribute routing would function in the real world setting.

AT&T also stated that the evidence established that the cost and time to put this untested system into place is prohibitive. AT&T pointed out that Intrado's witness Hicks agreed that the Commission should consider, at a minimum, "technical feasibility, cost and time to implement," in determining the reasonableness of a proposal. Further, AT&T noted that witness Hicks testified that he had no idea of the time and cost to AT&T to implement line attribute routing, but stated that the cost to implement line attribute routing is to be borne by AT&T.

AT&T witness Constable testified that AT&T has never used line attribute routing for 911 service. However, based on comparable projects, he believed that line attribute routing would cost between two to three million dollars and require 12 to 18 months to implement. Witness Constable also stated that class marking is time consuming, manual, and inefficient in addition to requiring costly changes at the wire center level and on each individual line.

AT&T witness Constable explained that class marking would require special, complicated switch software translations to be built into every split wire center switch for individual end users and PSAPs served within a split wire center office. Witness Constable also stated that each line would require a service order to be issued to change the properties associated with the individual customer's service to class mark that line to the correct PSAP. AT&T believed that the Intrado proposal should be rejected because there was no evidence to support a conclusion that it should be required to bear the substantial implementation costs of putting a new system in place.

AT&T also stated that Issue No. 7 - Matrix Issue No. 3(a) involves two side issues. First, Intrado takes the position that if the Commission does not adopt class marking, then it should simply make Intrado's selective router the Primary Router in all cases. In response, AT&T argued that Intrado criticizes selective routing on the one hand because it introduces additional switching and the theoretical possibility of

technical problems. Yet, Intrado's alternative request is that it should always be the primary SR, even if it serves a PSAP that will handle only a small percent of the calls in any given area. AT&T noted that witness Constable testified on this point that Intrado's proposed language would give Intrado an unnecessary competitive advantage by creating additional charges that must be borne by PSAPs. AT&T also stated that there was no logical reason why Intrado should always be the primary SR. Second, AT&T believed that Intrado seeks to interject into Issue No. 7 - Matrix Issue No. 3(a) a pricing sub-issue that really has nothing to do with the routing question that is the proper subject of Issue No. 7 - Matrix Issue No. 3(a), and which is inappropriate for inclusion in the arbitration of a Section 251 Agreement. AT&T explained that under the current system the carrier designated as the primary SR bills the PSAP that ultimately receives the call for selective router functionality. AT&T stated that Intrado claims that this routing function does not constitute a service to the PSAP, and therefore, AT&T should not be allowed to charge the PSAP. AT&T argued that Intrado's position must be rejected because the purpose of this arbitration is to arrive at a set of rates, terms, and conditions for interconnection between the parties, not to determine what a third party should or should not be charged for services that are provided by either party. According to AT&T a Section 251/252 arbitration between an ILEC and a CLP is not the proper proceeding to determine what either carrier may charge third party customers that are not a party to the proceeding.

The Public Staff stated that this issue involves 911 calls delivered from an AT&T end office to a PSAP served by Intrado in a wire center split among multiple PSAP providers. The Public Staff stated that it agreed with AT&T that the primary/secondary routing process currently in place today should remain as the default routing method in split wire centers. Additionally, the Public Staff agreed with AT&T's method of determining the primary selective router, i.e., the router assigned to the PSAP that serves the majority of access lines in the wire center. The Public Staff stated that it does not support Intrado's recommendation to require AT&T to convert its systems to provide line attribute routing. The Public Staff commented that, based on the cost and reliability issues associated with line attribute routing, it does not believe that Intrado's request is reasonable or necessary. The Public Staff maintained that primary/secondary routing can provide Intrado with the access to 911 traffic needed to provide service to prospective PSAP customers. Further the Public Staff believed that AT&T's proposal also allows it to meet its federal obligations under Section 251(c)(2)(d) of the Act to provide interconnection at least equal in quality to that provided to itself or another ILEC.

The Public Staff also recommended that the Commission should decline to find that AT&T should not charge a PSAP served by Intrado in the event that AT&T serves the primary routing function. Likewise, if Intrado provides the primary routing function in a split wire center, and transfers calls to an AT&T secondary router, the Public Staff recommended that the Commission should decline to find that Intrado should not charge the PSAP for its primary routing service. The Public Staff believed that costs incurred by a third-party PSAP should not be addressed in the ICA.

The Commission agrees with AT&T that the primary/secondary routing process currently in place today should remain as the default routing method in split wire centers. In reaching this conclusion, the Commission notes that Intrado has requested that the Commission order AT&T to provide it with a routing arrangement with direct trunking and line attribute routing. Intrado argued that the arrangement that it desires is technically feasible and superior to the methods now employed by AT&T. Intrado thus advocated that the current system be discarded in favor of this new superior system and that, to the extent that any costs are involved in implementing this proposal, those costs are to be borne by AT&T. Intrado relied upon Section 251(c)(2)(C) which requires that AT&T provide Intrado with an interconnection agreement which is equal in quality to the arrangement that it provides to itself to support its request. AT&T countered that AT&T does not currently use line attribute routing in providing 911 service and that line attribute routing is, at least in the opinion of Intrado, superior to the method AT&T currently uses to route 911 calls. AT&T argued further that Intrado's advocacy that the current system be discarded in favor of a new "superior" system creates an insurmountable legal impediment to Intrado's position because Section 251(c)(2) only requires AT&T "to offer interconnection that is at least equal in quality to that provided . . . to itself, or to any subsidiary, affiliate or any other party to which the carrier provides interconnection."

The FCC has stated unequivocally that Section 251(c)(2) requires an ILEC to offer a competitor interconnection that is "at least" equal in quality to that enjoyed by the ILEC itself. The FCC states further that: "This is a minimum requirement. Moreover, to the extent a carrier requests interconnection of superior or lesser quality than an incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection arrangement if technically feasible. Requiring incumbent LECs to provide upon request higher quality interconnection than they provide themselves, subsidiaries, or affiliates will permit new entrants to compete with incumbent LECs by offering novel services that require superior interconnection quality. We conclude that, *as long as the new entrants compensate incumbent LECs for the economic costs of higher quality interconnection,* competition will be promoted." *First Report and Order*, Para. 225. Emphasis added.

Assuming arguendo that Intrado has made the case that the superior interconnection agreement that it has proposed is technically feasible for AT&T to implement, Intrado is entitled to and AT&T must provide the arrangement to Intrado, provided Intrado is willing to compensate AT&T for the economic costs of the higher quality interconnection. The evidence presented in this proceeding, to the extent that there was any evidence provided, indicates that the costs to AT&T to implement Intrado's novel intelligent Emergency Network ® arrangement would be substantial and that Intrado is not willing to bear any of the financial burden. Under these circumstances, we cannot and shall not require AT&T to accommodate Intrado's interconnection request to reprogram its central offices to permit line attribute routing.

In addition, the Commission agrees with AT&T that the primary/secondary routing process currently in place today should remain as the default routing method in

split wire centers. The Commission declines to require AT&T to convert its systems to provide line attribute routing. The Commission believes that line attribute routing is a more error prone way of sorting 911 traffic, while requiring an unknown, but certainly sizable, cost and time commitment for AT&T to implement. These costs could also recur if a PSAP decides to switch to another provider from Intrado.

Based on the cost and reliability issues associated with line attribute routing, the Commission does not believe that Intrado's request is reasonable or necessary. Primary/secondary routing can provide Intrado with the access to 911 traffic it needs to provide service to prospective PSAP customers. AT&T's proposal also allows it to meet its federal obligations under Section 251(c) of the Act to provide interconnection at least equal in quality to that provided to itself or another ILEC.

Finally, the Commission agrees with the Public Staff and AT&T that the proper method of determining the primary selective router, i.e., the router assigned to the PSAP that serves the majority of access lines in the wire center, is appropriate. Further, the Commission is of the opinion that either AT&T or Intrado can charge the PSAP(s) for primary or secondary selective routing functions. The Commission believes that a Section 251/252 arbitration between an ILEC and a CLP is not the proper proceeding to determine what either carrier may charge third party customers that are not a party to the proceeding and that costs incurred by a third-party PSAP should not be addressed in the ICA.

CONCLUSIONS

The Commission concludes that AT&T's proposed primary/secondary routing system shall be used to handle 911 traffic in a split wire center. The primary selective router shall be determined by which selective router is assigned to the PSAP that serves the majority of access lines in the wire center.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

ISSUE NO. 8 – MATRIX ISSUE NO. 3(b): What trunking and traffic routing arrangements should be used for the exchange of traffic when AT&T is the designated E911/911 service provider?

POSITIONS OF PARTIES

INTRADO: AT&T's proposed language would require Intrado to provide interconnection trunking at each AT&T selective router in areas in which Intrado provides local exchange service to end users. Intrado has revised this language to clarify that Intrado's only obligation when providing local exchange service to end users is to have its end users' 911 traffic delivered to each AT&T selective router. AT&T's language would require Intrado to provide its own trunking to those routers rather than use transport facilities provided by a third party. There is no requirement that Intrado self-provision trunking to each AT&T 911 selective router.

AT&T: When AT&T is the designated 911/E911 service provider, AT&T expects to offer reciprocal trunk arrangements necessary to provide reliable 911/E911 service to Intrado's end user local exchange customers.

PUBLIC STAFF: The language in the agreement should require Intrado to establish trunking to the appropriate POI on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

DISCUSSION

Intrado stated that it does not dispute that it is required to deliver 911/E911 service calls to AT&T's selective routers when AT&T is the designated 911/E911 service provider. Intrado disagreed with AT&T's language that would require Intrado to provide interconnection trunking at each AT&T selective router. Intrado maintained that it has the right to either self-provision trunking or obtain trunking from a third party.

AT&T characterized Intrado's proposed language on this issue as Intrado merely needing to arrange to deliver 911 traffic. AT&T stated that this general language ignores the fact that facilities and trunks are different. AT&T's proposal does not require Intrado to provide the "facilities" to each AT&T selective router, only that it provides interconnection trunks to the appropriate selective routers. AT&T maintained that the trunk arrangements should be reciprocal to what AT&T will provide its end user in accessing Intrado's PSAP customers.

The parties did not provide testimony addressing this issue. However, the Public Staff agrees with Intrado's position that it should be allowed to set up its network and to reach the POI on AT&T's network through a third party, if it desires to do so. The agreement language should clearly allow Intrado to arrange for third party facilities to reach the AT&T POI while making clear that Intrado is responsible for the establishment of the necessary trunking whether using its own facilities or those of a third party.

For the reasons stated by the Public Staff, the Commission believes that the agreement language should clearly allow Intrado to arrange for third party facilities to reach the AT&T POI while making clear that Intrado is responsible for the establishment of the necessary trunking whether using its own facilities or those of a third party. The Commission acknowledges AT&T's comment that facilities and trunk arrangements are different. However, the Commission directs Intrado and AT&T to provide reciprocal trunk group arrangements, to include facilities, to insure the reliable exchange of traffic between their networks. The Commission also agrees with the Public Staff that Intrado has the right to either self-provision trunking or obtain trunking from a third party. The Commission believes that Intrado has the right to construct or lease facilities to reach the agreed upon POI on AT&T's network, and that Intrado is also responsible for any required trunking equipment necessary to connect to the AT&T selective router.

CONCLUSIONS

The Commission concludes that the ICA shall clearly allow Intrado to arrange for third party facilities to reach the AT&T POI while making clear that Intrado is responsible for the establishment of the necessary trunking whether using its own facilities or those of a third party.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8, 9, 10, AND 11

ISSUE NOS. 9-12 – MATRIX ISSUE NOS. 4, 4(a), 4(b), AND 4(c): What terms and conditions should govern points of interconnection (POIs) generally, and when: (a) Intrado Communications is the designated 911/E911 service provider; (b) when AT&T is the designated 911/E911 service provider; and (c) when a fiber mid-span meet is used?

POSITIONS OF PARTIES

INTRADO: For non-911 traffic, Intrado has the right to designate a single POI at any technically feasible location on AT&T's network. For 911/E911 traffic, when Intrado has been selected as the designated provider of 911/E911 services, AT&T must interconnect to a minimum of two geographically diverse POIs on Intrado's network, which would be Intrado's selective router/access ports. When AT&T has been designated as the 911/E911 service provider, Intrado will establish a POI on AT&T's network for the exchange of local exchange traffic and emergency calls. This point may be at AT&T's selective router/911 tandem or any mid-span meet point established by the parties. If the parties were to interconnect for the exchange of non-911 traffic using a mid-span meet point, Intrado's proposed language would require the parties to negotiate a point at which one carrier's responsibility for service ends and the other carrier's begins and each party would pay its portion of the costs to reach the mid-span meet point.

AT&T: Federal law requires the POI to be established on the incumbent LEC's network. The POI shall be established within AT&T's network at the most economical and efficient location to provide service to a PSAP, which is at AT&T's Selective Router.

PUBLIC STAFF: AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network. The parties may negotiate and establish multiple POIs, or different POIs for different types of traffic, but indicating to the parties a specific POI for a particular type of service, i.e., 911 service, is outside the authority of the Commission. AT&T is not required to agree to an interconnection point on the network of Intrado, but may agree to interconnect at a point on Intrado's network as part of a negotiated settlement.

DISCUSSION

In this arbitration, the parties have propounded the following issues for response by the Commission. First, what terms and conditions should govern points of interconnection (POIs) generally? And, second, what terms and conditions should govern points of interconnection when: (a) Intrado is the designated 911/E911 service provider; (b) AT&T is the designated 911/E911 service provider; (c) when a fiber mid-span meet is used? To answer those questions, the Commission must determine our authority to determine the location of the POI.

In our decisions in *In re the Petition of Ellerbe Telephone Co. et al for Arbitration with Alltel Communications et al*, Docket Nos. P-21, Sub 71 et al, *Recommended Arbitration Order (RAO)*, issued on December 20, 2007, and *Order Ruling on Objections and Requiring the Filing of Composite Agreements (Objections to RAO),* issued on December 31, 2008, respectively, this Commission, on two occasions, struggled to discern the statutory authorization for locating the POI when the parties sought to interconnect with each other indirectly. Although the Parties to this proceeding had the benefit of the *RAO* prior to the filing of Post-Hearing Briefs and Proposed Orders and the Parties included and discussed the *RAO* in their analysis as they saw fit, none of the Parties had the benefit of the Commission's *Objections to RAO* prior to these filings. As a result, none of the Parties considered the issuance of the *Objections to RAO* in their Post-Hearing Briefs and Proposed Orders. Because we believe that both of these decisions are germane to the questions raised in this proceeding about the number and location of the POI, we will discuss each decision in detail.

In the *RAO*, a Commission Panel, with one Commissioner dissenting, decided that the POI must be located on the ILEC's network when the ILEC sought to interconnect with the CMRS Providers to deliver traffic to the CMRS Providers' customers. In the opinion of the Majority, the POI was required to be located on the ILEC's network even though the parties had agreed to interconnect indirectly through a third party tandem. The Panel Majority reasoned that, this Commission's prior decision in *In re Alltel, Docket No. P-118, Sub 130 (Alltel Order)*, held that when two carriers interconnect, either directly or indirectly, they must have a POI (i.e., a single point of interconnection at which traffic is exchanged between the two carriers' networks), and that that point of interconnection must be at a technically feasible point on the ILEC's network unless the two parties mutually agreed to do otherwise. In the Majority's opinion, this decision was mandated by Section 251(c)(2) and the FCC's regulations governing interconnection. The Dissenting Commissioner disagreed. He argued that clear federal authority held that, when an ILEC chooses to interconnect indirectly with a CLP through the use of a third party tandem, the interconnection was initiated pursuant to Section 251(a) rather than Section 251(c)(2). Because the parties had chosen to interconnect indirectly and the ILEC had chosen to exchange traffic in that manner, the Dissenting Commissioner asserted that there were two POIs for the exchange of traffic and that the POI was located on the CMRS Provider's network rather than the ILEC's network when the ILEC delivered the ILEC customer traffic to the CMRS Providers' networks for completion. The Dissent also reasoned that when the scenario was

reversed, i.e., when the CMRS Provider indirectly delivered its customers' traffic to the ILEC's network for termination through the same third party tandem, the POI was to be located on the ILEC's network.

On reconsideration, the Full Commission, by a four to two vote, affirmed the original panel decision that there was but one POI and that the POI was to be located on the ILEC's network even though the ILEC had chosen to deliver its customers' traffic to the CMRS Provider through the use of a third party tandem. See the *Objections to RAO.* Although the Majority affirmed the decision of the earlier panel, it declined to adopt the panel's reasoning that the decision regarding the location of the POI was mandated by 47 U.S.C. 251(c)(2). Instead, the Majority held that, since the request to interconnect was not initiated by the CMRS Providers, but, rather by the ILEC, 47 U.S.C. 251(c)(2) did not govern the location of the POI. In the Majority's opinion, the location and, indeed, the number of POI(s) was grounded in the Section 251(a) requirement which provides that each telecommunications carrier has a duty to interconnect either directly or indirectly with the facilities and equipment of other carriers when the interconnection was made at the behest of the ILEC. The Majority stated:

> The Commission continues to believe that, in these dockets, there should be only one POI and it should be located on the RLECs' network. Obviously, in the absence of reliance on Section 251(c)(2), the grounding for that conclusion must be found elsewhere. The Commission believes that such grounding can be found in Section 251(a)(1), which provides that "[e]ach telecommunications carrier has the duty (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." This, of course, was the provision that the *Atlas* court relied upon. Unlike the language of Section 251(c)(2), Section 251(a)(1) does not specify the number of POIs or where the POI or POIs should be located. *As a result, the literal language of Section 251(a)(1), in an arbitration in which an RLEC seeks interconnection with a CMRS Provider, would seem to provide the Commission with the discretion to determine how many POIs there should be and where they should be located.* As a result, the Commission will proceed to determine, on the basis of its sound discretion, the number and location of the POIs for purposes of the parties' interconnection agreements. *(emphasis added).*

Objections to RAO, pp.11-12.

The Majority thereafter concluded that, in the exercise of its sound discretion, and based upon the equities in the case, the POI should be located at a single location of the CMRS Providers choice on the ILEC's network. The Majority grounded its decision in the Commission's discretionary authority under Section 251(a) to determine both the location and number of POIs, rather than mandatory provisions contained in Section 251(c)(2) which, when interpreted by the FCC, directed that a single POI must be established on the ILEC network. Two Commissioners dissented from the decision.

It is noteworthy that neither the Dissenters in the *Objections to RAO,* nor the Dissenter in the *RAO,* based their objections to the decision on the invalidity of the single POI rule *per se*. Rather, their objections were primarily based upon the inapplicability of the single POI rule when the carriers agreed to indirectly interconnect. Indeed, there appears to be universal agreement that when a requesting CLP seeks to directly interconnect with an ILEC, the CLP has the option to choose a single, technically feasible, location within the ILEC's network upon which to interconnect and that the parties are bound by that choice, unless the parties agree to do otherwise.[14]

The Commission thus concludes that the following general principles can be gleaned from our prior decisions in the *RAO,* the *Objections to RAO*, the federal statutes and the pronouncements of the FCC. First, when a requesting CLP seeks to interconnect directly with an ILEC, the requesting CLP has the option to select a single POI within the ILEC network. Second, when a requesting CLP seeks to interconnect directly with an ILEC, the parties may agree to establish a single POI or multiple POIs, at any location or number of locations, without regard to the requirements of Section 251(b) or (c). The location of the POI is thus chosen pursuant to the mandates in Section 251(c)(2) in the first instance or, under the auspices of Section 252(a)[15] in the second. Third, when an ILEC requests interconnection with a CLP or any other carrier, either directly or indirectly, the interconnection is pursuant to Section 251(a). Again, under those circumstances, the parties may agree to establish a single POI or multiple POIs, at any location or number of locations, without regard to the requirements of Section 251(b) or (c). If, however, the parties cannot agree voluntarily upon either the location or number of POI, the Commission *may*, in its discretion, determine both the number and location(s) of the POI. With these general principles in mind, we now determine the issues presented by the parties regarding the number and locations of the POIs based upon the facts and, where necessary, the equities of this case.

Matrix Issue No. 4 - What terms and conditions should govern POIs generally?

Intrado asserted that, when AT&T is the designated 911/E911 service provider or for non-911 traffic, Intrado is entitled to interconnect at any location on AT&T's network. Intrado stated that it cannot agree to language that would undermine its right as the competitor to designate the location of the POI.

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[14] See Section 251(c)(2) of the Act. Further, in its Further Notice of Proposed Rulemaking about "Developing a Unified Intercarrier Compensation Regime," CC Docket 01-92 (Released March 3, 2005) (*Intercarrier Compensation NPRM*), the FCC wrote at Paragraph 87 that "[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carriers to connect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA."

[15] Section 252(a)(1) provides that "[u]pon receiving a request for interconnection, services, or network elements pursuant to Section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251."

Intrado added that, for the exchange of basic telecommunications traffic, it is entitled to designate any technically feasible location within AT&T's network for the POI. As such, Intrado argued that it is not limited to AT&T's end office or tandem as AT&T's language requires.

Witness Constable testified that the POI issue arises when two telecommunications carriers interconnect their networks. He explained that in this situation, the facilities are physically connected, linking the two networks to one another. Therefore, the point at which this connecting or linking takes place is identified as the POI.

AT&T observed that the clear language of the Act establishes that the POI must be on AT&T's network. AT&T pointed out that Section 251(c)(2)(B) specifically provides that interconnection takes place "at any technically feasible place within the carrier's network." AT&T argued that Intrado does not address this clear language of the Act in any portion of its testimony, nor has it provided the Commission with a basis to find that this language does not apply.

The Public Staff stated that the authority governing this issue can be found in the FCC rules for interconnection in Part 51.305. That section provides, in part:

Part 51.305 Interconnection

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(2) At any technically feasible point within the incumbent LEC's network including, at a minimum:

(i) The line-side of a local switch;
(ii) The trunk-side of a local switch;
(iii) The trunk interconnection points for a tandem switch;
(iv) Central office cross-connect points;
(v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and
(vi) The points of access to unbundled network elements as described in Section 51.319.

The Public Staff noted that Intrado has argued that there should be multiple POIs, depending on which party is providing service to the PSAP. When the PSAP is a customer of Intrado, AT&T should establish two geographically diverse POIs on

Intrado's network; and, when AT&T provides service to the PSAP, Intrado will establish the POI on AT&T's network. The Public Staff further noted that, Intrado also offered as an alternative the possibility that the parties will agree on a meet point between the networks, with both parties responsible for getting their respective traffic to the meet point. According to Intrado, the proposed meet point method is similar to the way AT&T interconnects with other ILECs for the exchange of 911 traffic. Intrado would like to "mirror the type of interconnection arrangements that AT&T has used historically with other ILECs."

The Public Staff observed that AT&T proposes that the POI be established at AT&Ts selective router location(s), which follows the precedent established when the FCC determined that interconnection at the selective router was the proper interconnection point for wireless carriers. Also the Public Staff observed that AT&T believes that Intrado's proposal to interconnect in the manner AT&T does with other ILECs is not appropriate because Intrado is not an ILEC, and those type arrangements are not governed by the requirements for interconnection requested under Section 251.

The Public Staff concluded that neither Intrado nor AT&T can compel the other to use its favored interconnection arrangements. The Public Staff concluded that Intrado has the right to interconnect at a point on AT&T's network as described in FCC rules, specifically Part 51.305. While both parties may freely agree to choose any of these approaches, the Commission's authority is limited by the language in the FCC rules. The Public Staff stated that both parties should ensure the safety of the public in operating an efficient 911 system.

The Commission believes that, generally speaking, AT&T is obligated "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network – at any technically feasible point within the carrier's network when Intrado requests to interconnect with AT&T."[16] The Commission further believes that AT&T is not obligated to choose a point of interconnection on Intrado's network. However, AT&T may, in the course of doing business, interconnect with Intrado or any other carrier in a contractual arrangement satisfactory to both parties. Intrado stated that it was not aware of the contractual arrangements which AT&T may have had in the past with other carriers, although special negotiated facility arrangements were not at all uncommon between carriers for the exchange of traffic. However, as pointed out by the Public Staff, Intrado is entitled to interconnect with AT&T's network as described in FCC rules, specifically Part 51.305.

Additionally, the Commission believes that the parties should mutually agree on a POI which is technically feasible for the exchange of local exchange traffic and access traffic, as necessary.

[16] See Section 251(c)(2) of the Act.

CONCLUSIONS FOR MATRIX ISSUE NO. 4

In accord with the discussion set forth in the preamble to this issue, the Commission concludes that: (1) AT&T is required by Section 251(c)(2) and Part 51.305 of the FCC rules to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T; and, (2) the parties may agree to establish a single POI or multiple POIs at any location or number of locations without regard to the requirements of Section 251 (b) or (c).

Matrix Issue No. 4(a) - What terms and conditions should govern points of interconnection when Intrado is the designated 911/E911 service provider?

According to Intrado, in its rules to implement the Act, the FCC gave competing carriers the option to select the most efficient points at which to exchange traffic with the ILEC. Intrado commented that the FCC found that Section 251(c)(2) gave competitors the right to interconnect on the ILEC's network rather than obligating competitors to transport traffic to less convenient or efficient points. Intrado reasoned that Section 251(c)(2)(B)'s requirement that the POI be on the ILEC's network was established for the benefit of the competitor, not the ILEC.

Intrado stated that, to provide competitors with further benefits and ease of entry, the FCC determined that competitors have the right to establish only one interconnection point with the ILEC, which protected competitors from ILEC demands to interconnect at multiple points on the ILEC network. The FCC found that the single point of interconnection rule benefits the competitor by permitting it to interconnect for delivery of its traffic at a single point on the ILEC's network. Further, while the single point of interconnection rule was available to competitors, the FCC expressly recognized competitors were not precluded from establishing an alternative arrangement, such as one that permitted the ILEC to deliver its traffic to a different point or additional points that were more convenient for the incumbent than the single point designated by the competitor.

According to Intrado, the FCC concluded that these were intended to be minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection to offset the imbalance in bargaining power. Intrado added that the FCC determined that, for Section 251 purposes, if an ILEC provides interconnection to a competitor in a manner that is less efficient than the ILEC provides itself, the ILEC violates its duty to be just and reasonable under Section 251(c)(2)(D).

Intrado stated that AT&T apparently recognizes that the industry practice is that the POI for connecting to the 911/E911 network is at the selective router. Intrado stated that this is consistent with the FCC's finding that the cost allocation point for the exchange of 911/E911 traffic should be at the selective router. Intrado added that, the Ohio Public Utilities Commission also confirmed that the point of interconnection should be at the selective router of the 911/E911 network provider and that an ILEC sending

911/E911 traffic to Intrado is responsible for delivering its 911/E911 traffic to an Intrado selective router location.

AT&T routinely requires all competitive carriers serving end users in the AT&T geographic service area to bring their end users' 911 calls to the appropriate AT&T selective router serving the PSAP to which the 911 call is destined, even when those carriers have established a POI at a different location for all other local exchange telephone traffic. Intrado stated that it seeks interconnection arrangements with AT&T for the provision of 911/E911 services to PSAPs that are at parity with what AT&T provides itself and others when it is the designated 911/E911 service provider. Intrado suggested that AT&T has not demonstrated why the interconnection arrangements it proposes on CLPs when AT&T is the designated 911/E911service provider are not equally applicable when Intrado is the designated 911/E911 service provider.

Intrado further stated that when AT&T is not the 911/E911 service provider for a PSAP, AT&T takes its originating end users' 911 calls to a meet point established with an adjacent carrier or all the way to the adjacent carrier's selective router. Intrado added that while not privy to the un-filed agreements between AT&T and adjacent ILECs, Intrado seeks interconnection between its network and AT&T's network similar to what AT&T has implemented for itself and with other 911/E911 service providers in the State. Intrado stated that the existence of these arrangements demonstrates that such arrangements are the preferred method of interconnection for completing calls to the 911/E911 service provider and are technically feasible. Intrado argued that AT&T is required under Section 251(c)(2)(C) to make the same arrangement available to Intrado that it makes available to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.

Intrado also noted that the FCC has determined that, if a particular method of interconnection is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures. Intrado pointed out that AT&T has not made a showing that there are any reasons, based on interface or protocol standards, why the two networks would not successfully interconnect at a technically feasible point employing substantially similar facilities.

Intrado stated that it has requested AT&T to establish interconnection to a minimum of two geographically diverse POIs on Intrado's network for reliability and redundancy purposes, and to benefit public safety. Intrado stated that implementation of its proposal would ensure that 911 calls are diversely routed consistent with FCC recommendations. The public benefit of diversity and redundancy requested has been supported by the FCC's Network Reliability and Interoperability Council (NRIC), which found when all 911 circuits are carried over a common interoffice facility route, the PSAP has increased exposure to possible service interruptions related to a single point of failure, such as a cable cut. Intrado believes that its proposed language implements industry best practices for diversity and redundancy.

Intrado also pointed out that AT&T is not encumbered in providing multi-LATA 911 services. Thus, Intrado reasoned that there should likewise be no restrictions on AT&T's ability to carry 911 service destined for Intrado's network outside of a LATA. Intrado stated that, the FCC and federal district court overseeing the Modified Final Judgment recognized that many 911/E911 transmissions cross LATA boundaries.

Intrado explained that it plans to deploy at least two geographically diverse routers in the state at which AT&T, CLPs, and other carriers can interconnect with it to deliver 911 calls destined for Intrado's PSAP customers. Intrado suggested that AT&T's concern about the "impact" of Intrado's POI proposal on other carriers was misplaced. Intrado stated that, by connecting to any Intrado selective router, a carrier can reach any PSAP connected to Intrado's network.

Intrado commented that Section 253(b) of the Act gave the Commission authority to adopt requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Intrado added that Section 253(b) gives the Commission broad regulatory authority to achieve these public interest objectives and Intrado's proposed physical architecture meet the objectives set forth in the Act.

AT&T stated that witness Constable testified that if Intrado does not interconnect at AT&T's selective router, then, under the language Intrado proposes, all carriers would be required to reroute their facilities from the selective router at which it currently interconnects to the location that Intrado chooses. This would, in turn, impose additional costs on these carriers and risk service interruptions for 911 traffic. AT&T stated that interconnections for the provision of 911 services are currently at AT&T's selective routers.

According to Intrado, when Intrado is the designated 911 provider, AT&T should interconnect on Intrado's network at Intrado's selective routers. However, witness Hicks also testified that it currently does not have any selective routers in North Carolina other than one that is being used for test purposes. As pointed out by AT&T, witness Hicks also testified that he does not know the location of the test selective router or whether it is in the location at which Intrado plans to permanently place a selective router. AT&T commented that, nevertheless, Intrado would expect AT&T to interconnect at both selective router locations, wherever these locations may ultimately be.

To illustrate its point, AT&T commented that, if an AT&T customer is in Asheville, and Intrado's customer (i.e., the PSAP) is in Asheville, Intrado should have no objection to having a local presence in the area in which it is providing service, such as AT&T does. AT&T suggested that the practical effect of Intrado having remotely located selective routers is that AT&T must bear the transport costs for Intrado to reach its various PSAP customers around the State. AT&T also pointed out that, under Intrado's proposal, all of the CLPs and ILECs would have to pay the costs to transport their customers' 911 calls to Intrado's selective routers. AT&T suggested that Intrado has

the option of reducing its costs by placing its equipment in the areas that it plans to serve in a location that is relatively close to AT&T's selective routers.

In the scenario presented in Issue 4(a), AT&T seeks to interconnect with Intrado to allow AT&T's customers to complete calls to the Intrado PSAP. This scenario is quite different from the traditional arrangement that exists in this state because Intrado will be performing the service that has traditionally been performed by ILECs such as AT&T. Additionally, this arrangement differs from the traditional approach because, in this instance, the request for interconnection originates with AT&T, the ILEC, instead of Intrado, the CLP. When the ILEC initiates a request to interconnect with the CLP's network, the Commission's authority to consider and implement the proposals made by the parties is governed by the authority that we derive from Section 251(a) rather than Section 251(c)(2). See *Objections to RAO.*[17]

In the case at bar, Intrado advanced various arguments in support of its contention that AT&T should be required to interconnect with Intrado on Intrado's network when Intrado served as the designated 911/E911 service provider. For instance, Intrado asserted that, in the AT&T-to-Intrado scenario here presented, AT&T should establish interconnection at a minimum of two geographically diverse POIs on Intrado's network for reliability and redundancy purposes, and to benefit public safety. Further, Intrado stated that implementation of its proposal would ensure that 911 calls are diversely routed consistent with FCC recommendations. Intrado argued that the public benefit of diversity and redundancy that it requested has been supported by the FCC's NRIC, when it found that, when all 911 circuits are carried over a common interoffice facility route, the PSAP has increased exposure to possible service interruptions related to a single point of failure, such as a cable cut. Intrado asserted that its proposed language implements industry best practices for diversity and redundancy and that Section 253(b) gives the Commission broad regulatory authority to

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[17] See also, *Intrado Petition for Arbitration Order before the Ohio Public Utilities Commission*, Case No. 72-1216-TP-ARB, September 24, 2008 (*Ohio PUC Order*) where the Ohio Public Utilities Commission found that Section 251(c) was not applicable in a scenario where Intrado served as the designated 911/E911 service provider. The Ohio Public Utilities Commission stated: "In the second scenario whereby Intrado is the 9-1-1 service provider to the PSAP, the Commission notes that it is the ILEC (e.g., Embarq) that will be required to seek interconnection with Intrado for the purpose of allowing for the completion of Embraq's customer's emergency service calls to the PSAP. Therefore, Section 251(c) of the Act is not the applicable statutory provision for the purpose of interconnection under this scenario inasmuch as Section 251(c) establishes the obligations of ILECs with respect to satisfying the requests of other telecommunications carriers. The delineated obligations include those related to the interconnection of the requesting carrier with the ILECs' networks. Consistent with this discussion, the Commission determines that the disputed issues related to the scenario in which Intrado is the 9-1-1 service provider to the PSAP, should be addressed pursuant to Section 251(a) of the Act, which establishes the duty of a telecommunications carrier (e.g., Intrado) to interconnect directly or indirectly with the facilities of other telecommunications carriers." *Ohio PUC Order*. p. 8. As we noted in the *Objections to RAO,* "the literal language of Section 251(a)(1), in an arbitration in which an RLEC seeks interconnection with a CMRS Provider, ... provide[s] the Commission with the discretion to determine how many POIs there should be and where they should be located."

achieve the public interest objectives and the physical architecture needs that it has identified.

After carefully considering the arguments, evidence, and briefs presented by Intrado and AT&T, the Commission is not persuaded that AT&T should be required to establish interconnection at Intrado's selective routers at two geographically diverse locations on Intrado's network when Intrado serves as the designated 911/E911 service provider for the reasons generally advanced by AT&T. In particular, the Commission finds that it is unreasonable to expect AT&T to interconnect with Intrado at Intrado's selective router(s), which may be miles apart or, more specifically, removed from a particular AT&T exchange service area by LATA boundaries. Although the competitive marketplace is changing the geographic landscape of the traditional service exchange areas in which the ILECs were obligated to provide telecommunication services, to include 911 services, Intrado must not be allowed to make the ILECs and other telecommunication competitors incur operating expenses which are unreasonable or unwarranted because of Intrado's operating paradigm. Intrado's comments concerning how AT&T would have Intrado and other competitors connect with AT&T at AT&T's tandem switches, or at various other end offices, must be viewed in the context of practicality as to network design practices commonly used by service providers within the telecommunications industry.

Given the particular facts and equities presented in this proceeding, the Commission will not require AT&T to interconnect with Intrado's network at two *yet-to-be determined* locations anywhere within the state of North Carolina at the behest of Intrado. In reaching this conclusion, the Commission notes that the parties are free to choose to interconnect at a single point of interconnection, or at several different points of interconnection, as may be decided by the parties based upon the practice of basic network design characteristics. Further, we note that the parties are, for the most part, the best judges of the nature and needs, be it architecture or financial, of their individual businesses and networks. For these reasons, the Commission declines to order AT&T to interconnect with Intrado in the manner requested by Intrado when Intrado serves as the designated 911/E911 service provider. However, when Intrado is the designated 911/E911 service provider for a particular county and/or PSAP, AT&T should continue to practice accepted industry standards in providing emergency service coverage in the most responsible manner.

CONCLUSIONS FOR MATRIX ISSUE NO. 4(A)

The Commission concludes that, the parties may negotiate and establish multiple POIs, or different POIs for different types of services, but, the Commission will not exercise its discretion, in this case, to dictate to the parties a specific POI for a particular type of service.

Matrix Issue No. 4(b) - What terms and conditions should govern points of interconnection when AT&T is the designated 911/E911 service provider ?

Intrado stated that when AT&T is the designated 911/E911 service provider or for non-911 traffic, Intrado is entitled to interconnect at any location on AT&T's network. Intrado argued that it cannot agree to language that would undermine its rights as the competitor to designate the location of the POI.

For 911 traffic, Intrado agrees that AT&T's selective router is the appropriate POI for Intrado's delivery of 911 traffic to AT&T when AT&T is the designated 911/E911 service provider. However, Intrado declared that AT&T refused to identify the selective router as the POI and requires all 911 calls destined for its PSAP customers to be delivered to the relevant selective router. Intrado stated that it agrees with AT&T that 911 calls should be delivered to the relevant selective router when that selective router is the POI for all 911 traffic. For non-911 traffic, Intrado opined that it can choose any technically feasible location within AT&T's network for the POI.

According to AT&T Intrado's position appears to be that, when AT&T provides 911 services, Intrado is willing to interconnect on AT&T's network. AT&T suggested that to the extent that this is the case, the parties appear to be in agreement. However, AT&T pointed out that Intrado witness Hicks testified that Intrado had the option of either interconnecting at AT&T's selective router/911 tandem or utilizing a mid-span meet point.

The Commission believes that it can only require that AT&T allow Intrado to interconnect at any technically feasible point on AT&T's network. This position is certainly well established and based on FCC directives. Intrado has the right to interconnect on AT&T's network, at a technically feasible point, and may further request additional points on interconnection, if desired. The Commission believes that, in most instances, the AT&T local tandem for local exchange traffic could serves a dual function as the 911 selective router location when AT&T is the designated 911 provider.

CONCLUSIONS FOR MATRIX ISSUE NO. 4(B)

The Commission concludes that AT&T must allow Intrado to interconnect at any technically feasible point on AT&T's network. The parties may, however, mutually agree to establish multiple POIs, or different POIs for different types of services.

Matrix Issue No. 4(c) - What terms and conditions should govern points of interconnection (POIs) when a fiber mid-span meet is used?

Intrado stated that, if the parties decide to interconnect using a meet point, the meet point should be at a point between the parties' networks with both parties sharing the cost of the meet point arrangement. Intrado argued that AT&T's proposed language regarding meet point interconnection is not consistent with the FCC's requirements because it dictates the specific location of the meet point and does not address the

facilities AT&T is required to build to reach the meet point. Intrado claimed that AT&T utilizes meet point arrangements with other providers in North Carolina. Further, Intrado argued that meet point arrangements are technically feasible, and that Intrado has the right to obtain the same types of interconnection arrangements AT&T utilizes within its own network and with other carriers.

AT&T noted that Intrado claimed that it has the option of either interconnecting on AT&T's network at the selective router, an approach that AT&T obviously would agree with, or to require the use of a mid-span meet point. AT&T pointed out that Intrado does not identify a location for the meet point, but only contended that it has the right to negotiate for the use of such an arrangement. AT&T argued that the interconnection requirement provided for under Section 251(c)(2)(B) occurs on the ILEC's network. AT&T asserted that the meet point argument presented by Intrado should be disregarded under the law.

The Public Staff stated that Intrado offered as an alternative interconnection arrangement the use of a meet point between the networks, in which both parties are responsible for getting their respective traffic to the meet point. The Public Staff commented that Intrado stated that the proposed meet point method is similar to the way AT&T interconnects with other ILECs for the exchange of 911 traffic, and that Intrado would like to "mirror the type of interconnection arrangements that AT&T has used historically with other ILECs."

The Commission finds that, AT&T may, in the course of doing business, interconnect with Intrado or any other carrier in a contractual arrangement satisfactory to both parties. Intrado stated that it was not aware of the contractual arrangements which AT&T may have had in the past with other carriers, although special negotiated facility arrangements were not at all uncommon between carriers for the exchange of traffic. However, as pointed out by the Public Staff, Intrado is entitled to interconnect with AT&T's network as described in the FCC rules, specifically Part 51.305.

CONCLUSIONS FOR MATRIX ISSUE NO. 4(C)

The Commission finds that, AT&T may, in the course of doing business, interconnect with Intrado or any other carrier in a contractual arrangement satisfactory to both parties. Further, the Commission finds that AT&T is required by Section 251(c)(2) and Part 51.305 of the FCC rules to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T. However, the Commission also finds that Part 51.305 of the FCC rules does not provide guidance to the Commission as to the location of the POI when the parties decide to interconnect using the meet point. When the parties decide to interconnect through the use of a meet point and cannot agree upon the location, the Commission may, in its discretion, weigh the facts and the equities of a particular case to determine the terms and conditions governing the location of the POI when a fiber meet point interconnection is desired. In this particular case, however, the Commission,

in its discretion, will not mandate any language in the ICA regarding meet point, and will remind the parties that they are free to negotiate mutually agreeable meet point locations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

ISSUE NO. 13 – MATRIX ISSUE NO. 5: (a) Should specific terms and conditions be included in the ICA for inter-selective router trunking? If so, what are the appropriate terms and conditions? (b) Should specific terms and conditions be included in the ICA to support PSAP-to-PSAP call transfer with automatic location information (ALI)? If so, what are the appropriate terms and conditions?

POSITIONS OF PARTIES

INTRADO: The ICA serves as the framework for the interconnection and interoperability of competing local exchange networks. 911 is a local exchange network and end users (i.e. PSAPs) of the 911 network should be able to transfer 911 calls amongst themselves with full functionality regardless of who is the designated 911 service provider. In a competitive environment, a subscriber should be able to place calls to other subscribers without regard to who is the service provider. The best way to effectuate such seamless interoperability is to include provisions requiring inter-selective router trunk groups and PSAP-to-PSAP call transfer in the ICA.

AT&T: The best industry practice is for the parties to negotiate private agreements for such arrangements with the participation of PSAPs and other relevant government disaster agencies. Such agreements are necessary because it is the PSAP customer that determines whether a selective router is installed.

PUBLIC STAFF: The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other ILECs in North Carolina. ANI and ALI information that was initially transmitted to the serving AT&T end office during the 911 call should be retained whenever the call is transferred between the parties' selective routers.

DISCUSSION

Intrado stated that the parties disagree as to whether a separate agreement with the PSAP is necessary prior to implementing inter-selective routing capabilities. Intrado commented that it strongly supported the involvement of the county or PSAP in defining 911 call routing requirements, such as alternate routing, back-up routing, night transfer routing, call transfer routing, etc., with its designated 911 service provider. However, Intrado stated there is no need to include a provision in the interconnection agreement that requires the parties to obtain a separate, formal agreement with a county or PSAP as a prerequisite to deploying inter-selective router trunking. Intrado contended that the interconnection agreement should contain the framework for establishing the

interconnection and interoperability of the parties' networks to ensure inter-selective router capabilities can be provisioned once requested by a county or PSAP.

Intrado stated that inter-selective router trunking allows emergency calls to be transferred between selective routers and the PSAPs connected to those selective routers while retaining critical access to the caller's number and location information associated with the emergency call. Intrado suggested that establishment of inter-selective router trunking ensures that PSAPs are able to communicate with each other and more importantly, that misdirected calls can be quickly and efficiently routed to the appropriate PSAP.

Intrado commented that a second related issue on inter-selective trunking dealt with whether the parties were required to notify each other of changes in dial plans that support inter-selective router trunking. Intrado stated that dial plans are used to determine to which PSAP emergency calls should be routed based on the route number passed during the call transfer. Intrado stated that it proposed language that would require the parties to notify each other of any changes, additions, or modifications to 911-related call transfer dial plans. Intrado pointed out that Section 251(c)(5) of the Act requires ILECs to provide public notice of changes in their network that would affect the interoperability of facilities and networks.

AT&T commented that this issue involves the use of inter-selective routing to provide the ability for a PSAP to transfer a call directly to another PSAP. AT&T stated that, while not all PSAP customers order this service, PSAPs who do want these arrangements typically order them on a customized basis that varies from one PSAP to the next, and they order the arrangements directly from the service provider. Furthermore, PSAPs order precisely what they want and pay AT&T for what they order. AT&T witness Constable stated that Intrado's proposal would require AT&T to incur all of the costs to implement this capability, regardless of whether any PSAP requested it; yet neither the PSAP nor Intrado would compensate AT&T for any of its costs incurred to provide this feature.

AT&T argued that providing inter-selective routing does not involve interconnection at all and is, therefore, not proper for inclusion in an interconnection agreement. AT&T reiterated that the call transfer functionality is a feature that a PSAP orders to allow it to transfer a call to another PSAP. Intrado witness Constable testified that the engineering and implementation of call transfer must be designed and implemented in conjunction with a PSAP as well as any other relevant government agency. Unlike facility and trunking arrangements in a Section 251 interconnection agreement, these facilities and trunks would be deployed not to effectuate interconnection between AT&T and Intrado. Instead witness Constable stated that, "these facilities would be deployed to meet a specific request of the 911 customers, who are not parties to this agreement." AT&T commented that the purpose of a Section 251 interconnection agreement is to set the terms for interconnection between a CLP and an ILEC.

AT&T stated that, to provision inter-selective routing, it requests for call transfer capability to be initiated by the PSAP, and a separate agreement would be entered into to ensure that the PSAP gets precisely what it orders. In contrast, AT&T argued that Intrado wants AT&T to be directed to provide Intrado, without costs, call transfer functionality that it would provide PSAPs as a sort of "one-size-fits-all call transfer product."

AT&T commented that implementing the inter-selective routing that Intrado proposes would require AT&T to incur costs for facilities, trunks, database storage, extensive translations, and testing. However, AT&T commented that Intrado has not proposed a mechanism whereby AT&T could recover its costs, and Intrado has not offered to pay any of these costs in order to provide the PSAPs this feature. AT&T added that PSAP-to-PSAP inter-selective routing can be very useful, and this feature should be available to any PSAP requiring this feature. AT&T stated that this functionality should be made available to the PSAP requesting this feature on a customized basis. AT&T suggested that the PSAPs should pay "AT&T, or any other provider that undertakes the labor, and sustains the costs, necessary to create this capability."

AT&T witness Constable testified that AT&T does not know what Intrado means by "ALI interoperability" as the term is not defined in the ICA or in NENA standards. Witness Constable also testified that in the context of call transfer functions between AT&T and Intrado, the parties have detailed language regarding how ALI will be provided.

AT&T also addressed the dispute with Intrado related to the notification of dialing plan changes. AT&T stated that it objects to a requirement that it notify Intrado of each and every dialing plan change, as Intrado's contract language proposes AT&T to do. AT&T argued that such notification is unfairly burdensome and unnecessary, as AT&T experiences numerous dialing plan changes on a regular basis that have no impact whatsoever on inter-selective trunk routing for 911.

The Public Staff noted that Intrado witness Hicks contended that Intrado's "interoperability" plan utilizing inter-selective router trunking would ensure that call transfers from one selective router to another could be performed in a manner that allowed misdirected emergency calls to be terminated to the correct PSAP, irrespective of the 911 service provider. Calls transferred under its selective routing plan would retain critical caller ANI and ALI information associated with the call. Witness Hicks also contended while "interoperability," is technically feasible, it is currently only available on a limited basis in North Carolina. According to his testimony, interoperability is necessary to ensure that PSAPs can fully utilize the benefits of the enhanced, next-generation 911 services Intrado provides over Internet Protocol (IP)-based technology, while maintaining the minimum service that is available today. Further whenever technically feasible, he believed that the trunks interconnecting selective routers should be geographically diverse and redundant.

The Public Staff stated that Intrado's proposed ICA language would require interselective router trunking to allow calls to be transferred between PSAPs subtending AT&T's selective routers and PSAPs subtending Intrado's selective routers. The resulting networks would have to satisfy industry service quality standards and support diversity, redundancy, and reliability consistent with state or local 911 rules.

The Public Staff observed that AT&T witness Constable contended that expensive trunking facilities should not be constructed unless a PSAP formally requests inter-selective router call transfer capabilities. As stated by AT&T, if a PSAP does request these capabilities, the requesting PSAP should work with AT&T and Intrado to ensure that the proposed facilities satisfy its needs. Further, witness Constable argued that placing inter-selective router call transfer functionality in an interconnection agreement between AT&T and Intrado with no oversight from the PSAPs would inappropriately remove the PSAPs from the decision-making process. Witness Constable stated that Intrado's proposed provisions for inter-selective router trunking would cause AT&T to incur costs for facilities, trunks, database storage, translations, and testing without receiving any compensation. Witness Constable testified AT&T should have to bear such costs only if a PSAP intends to use the call transfer functionalities, and in such a case, the requesting PSAP should be involved in planning and implementing the call transfer architecture. Under present established practices, PSAPs that request inter-selective call transfer compensate AT&T for the costs of providing this service. Witness Constable argued that Intrado's proposal would remove the PSAPs from the picture and place the burden of those costs on AT&T.

The Public Staff also observed that in Section 4 of the 911 Appendix, AT&T proposed language that would require AT&T and Intrado to provide inter-selective routing upon request from a PSAP. The requesting PSAP would be expected to participate in the planning process to ensure that the inter-selective router functionality meets its expectations.

The Public Staff suggested that, based upon the evidence presented by witness Constable, which Intrado did not refute, the Commission should conclude that the primary/secondary routing architecture currently employed by ILECs is the appropriate architecture for AT&T and Intrado to use when they jointly provide 911 service under a split wire center arrangement. The Public Staff stated that this routing process appears to work well whenever ILECs share 911 responsibilities within a given geographical area. In addition the testimony indicates that this arrangement should be more cost effective and less error-prone to implement than the inter-selective router architecture proposed by Intrado.

The Public Staff also believed that the use of AT&T's current primary/secondary routing architecture will not impair Intrado's ability to deploy any of its new or enhanced 911 features. The Public Staff commented that if Intrado begins providing service and encounters problems with such deployments, the Commission should expect AT&T to work cooperatively and expeditiously with Intrado to solve them.

The Public Staff also recommended that AT&T and Intrado should provision their interconnected network so that each 911 call transferred from a primary to a secondary router retains the same ANI and ALI information that was initially delivered to the primary router. Additionally, the Public Staff stated that each party should be responsible for advising the other party of any changes to its systems which may adversely impact the operation of the interconnected network, or the other party's provision of 911 service to the public.

The Public Staff stated that AT&T's charges for the facilities, equipment, and services needed to interconnect with Intrado to offer 911 services to PSAP and the public must comply with the requirements of Section 251(c). The Public Staff also stated that AT&T's charges and the charges Intrado intends to impose on AT&T for interconnection must be specified in the parties' ICA other than those involving trunking between a PSAP served by an AT&T selective router and a PSAP served by an Intrado selective router. The Public Staff stated that language contained in the ICA should be mutually agreed to between AT&T and Intrado, and should not require any consent endorsements from PSAPs.

The Public Staff also observed that Intrado's proposed ICA language would require AT&T to notify Intrado if it upgrades its selective routers or makes changes that might affect inter-selective routing capabilities, even if these changes do not directly affect Intrado. Intrado proposed that AT&T should also be required to advise Intrado of network changes that affect call transfer capabilities. The Public Staff stated that Intrado believes that AT&T currently exchanges dial plan information with other 911 providers and contends that it deserves the same treatment.

The Commission believes that the interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other ILECs. In reaching this conclusion, the Commission finds AT&T's testimony that this arrangement shall be more cost effective and less error-prone to implement than the inter-selective router architecture proposed by Intrado persuasive. The Commission also notes that the Public Staff stated that this routing process appears to work well whenever ILECs share 911 responsibilities within a given geographical area. Further, Intrado did not dispute the fact that the primary/secondary approach as practiced in the industry today would achieve the continuing support of the delivery of 911 service between itself and AT&T, as well as other telecommunications providers.

The Commission agrees with the Public Staff that each party is responsible for advising the other party of any changes to its systems which may adversely impact the operation of the interconnected network, or the other party's provision of 911 service to the public. The Commission observes that Section 251(c)(5) of the Act requires ILECs to provide public notice of changes in their network that would affect the interoperability of facilities and networks. Therefore, the Commission believes that AT&T and Intrado will continue to comply with the rules and regulations, as generally practiced within the industry, governing the exchange of public notices of changes in dial plans between

service providers, as appropriate. The Commission further believes that in light of "technology neutrality," AT&T and Intrado are obligated to provide for the seamless and transparent exchange of information "between and across telecommunications networks."[18]

CONCLUSIONS

The Commission concludes that the interconnection of selective routers operated by AT&T and Intrado shall follow the primary/secondary routing architecture currently in use by AT&T and other ILECs in North Carolina. In addition, ANI and ALI information that was initially transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

ISSUE NO. 14 - MATRIX ISSUE NO. 6: (a) Should requirements be included in the ICA on a reciprocal basis for: (1) trunk forecasting; (2) ordering; and, (3) service grading? (b) If not, what are the appropriate requirements?

POSITIONS OF PARTIES

INTRADO: Intrado has modified AT&T's proposed ICA language to make forecasting provisions reciprocal. As co-carriers, both parties will be purchasing services from each other and thus each party should be aware of the process to order services and facilities from each other. Intrado has therefore included language addressing its ordering process that is consistent with industry terms and parameters in the ICA.

AT&T: In the 13-state Appendix ITR Section 6.1, AT&T requires Intrado to provide an initial trunk forecast to ensure adequate trunking to accommodate Intrado's demand when it enters the local exchange service market. While AT&T's general trunk forecast is made available to CLPs on an ongoing basis, AT&T's forecast will have no meaning for Intrado from an initial implementation perspective. Both parties should follow industry standard ordering guidelines and systems, using Access Service Requests (ASRs) and the EXACT system. AT&T should not be obligated to use an undefined and non-standard ordering system.

PUBLIC STAFF: The first two sentences of Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. Further, the ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is

[18] See Section 256(a)(2) Coordination For Interconnectivity, of the Act.

reasonable and reciprocal, and AT&T should be required to use Intrado's designated ordering process to obtain services from Intrado.

DISCUSSION

Intrado stated that it modified AT&T's proposed language to make the forecasting provisions for non-911 trunks applicable to both parties rather than solely imposed on Intrado. Intrado argued that it must have some indication from AT&T how many trunks will be required to support calls between the parties' networks to adequately groom its network. Intrado further stated that AT&T claims it will provide trunk forecast information to Intrado, but disputes the requirement to provide an "initial" trunk forecast. Intrado also stated that forecasts are integral to ensuring the parties' networks meet industry standards and are properly sized to accommodate both immediate and anticipated growth, without experiencing implementation delays. Similarly, Intrado believed that language addressing how AT&T will order services from Intrado should be included in the interconnection agreement. Intrado has provided detailed information regarding its ordering process and explained that its procedures incorporate the standard Alliance for Telecommunications Industry Solutions (ATIS)-OBF Access Service Request process much like AT&T uses today and provides to other carriers when they order services from AT&T.

Intrado suggested that as co-carriers exchanging 911 traffic with each other, both parties will be purchasing services from the other. Intrado stated that each party should be aware of the process to order services and facilities from each other.

AT&T stated that the parties generally agree that trunk forecasting requirements should be fair and reciprocal and that each party should provide the other with necessary information. AT&T contended that the dispute relates specifically to initial trunk forecasts. In Section 6.1, Appendix ITR, AT&T has requested that Intrado provide it with an initial forecast that is necessary to ensure that AT&T has available enough trunks to meet the demands of Intrado's network. AT&T argued that there is, in this limited situation, no need for a reciprocal requirement because an initial forecast from AT&T would be of no use to Intrado. AT&T stated that it requires Intrado's initial forecast to determine how much additional traffic Intrado will be adding to AT&T's network, and to plan accordingly. AT&T added, on the other hand, that Intrado is developing a new network that will be initially sized. AT&T suggested that Intrado does not need an initial AT&T trunk forecast to determine whether its pre-existing network is adequate.

As to the dispute regarding trunk orders placed by AT&T, Intrado has proposed a process that has been proposed whereby AT&T would order trunks from Intrado according to procedures posted on Intrado's website. AT&T contended that, under such a proposal, it would be bound to accept whatever future rates and procedures Intrado chooses to post. AT&T stated that a more equitable approach is to make the ordering processes reciprocal.

The Public Staff noted that, Intrado witness Hicks contended that both parties needed information on trunk quantities to ensure that they were adequate to handle both immediate and anticipated emergency call traffic and Intrado had modified the ICA to require the exchange of forecast information. Intrado posited that both parties needed to maintain a proper quantity of trunks and a grade of service consistent with industry standards.

The Public Staff believes that, as suggested by Intrado, the requirement for the parties to exchange initial information on their respective trunk forecasts is worthwhile and should be retained. After reviewing both parties proposed language on this issue, the Public Staff suggested that the exchange of trunk information should be reciprocal and suggested the adoption of the following language for this issue in Section 6.1 Appendix ITR:

> Each party agrees to provide an initial forecast for all trunks groups described in this Appendix ITR. Each Party shall review the initial trunk forecast provided by the other Party and provide any additional information to the other Party that it believes may impact the other Party's trunk forecast.

With respect to the issue of trunk ordering, the Public Staff noted that both parties proposed language with procedures that contemplate the use of an ASR. The Public Staff suggested that, because of the limited testimony on this issue, the ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and that AT&T should be required to use Intrado's designated ordering system to obtain services from Intrado.

The Commission is of the opinion that each party should exchange initial and on-going trunk information, as required, to ensure that the emergency call traffic is handled in the most efficient manner following industry standards. In the case of non-911 initial trunk information, it would appear reasonable that the initial trunk requirements for such traffic would be driven by Intrado's network and business plans to which AT&T would be expected to provide adequate facilities to meet. However, the Commission believes that the reciprocal exchange of trunk information would be beneficial to both parties and should occur.

The Commission notes that AT&T stated in its Proposed Order that the issue on service grading was resolved and therefore is not to be addressed by the Commission.

In addition, the Commission instructs AT&T to use Intrado's ordering system to coordinate and order trunk facilities in order to meet network demand. The Commission's basis for this position is based on the information, as presented, that both AT&T's and Intrado's ordering procedures follow standard industry practices for this function. As such, both parties are to reciprocate in its practice of ordering trunk facilities from each other as reasonable.

CONCLUSIONS

The Commission concludes that Section 6.1 of Appendix ITR of the original 13-state template shall be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado, and that each party should review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and AT&T shall be required to utilize Intrado's designated ordering process to obtain services from Intrado.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

ISSUE NO. 15 – MATRIX ISSUE NO. 7(a): Should the ICA include terms and conditions to address separate implementation activities for interconnection arrangements after the execution of the interconnection agreement? If so, what terms and conditions should be included?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should not be required to undertake additional activities (other than routine operational discussions) or enter into other agreements to effectuate their interconnection arrangements after the ICA has been executed. Further, Intrado stated that additional, unnecessary steps should not be required to implement interconnection arrangements or make network changes.

AT&T: AT&T asserted that Intrado shall notify AT&T when Intrado intends to interconnect to an AT&T Selective Router. Also, AT&T stated that either party should be required to give 120 days notice to add or remove a network switch.

PUBLIC STAFF: The Public Staff asserted that the ICA should include the terms and conditions proposed by AT&T to address separate implementation activities for interconnection arrangements after the execution of the ICA.

DISCUSSION

This issue was addressed by Intrado witness Hicks and AT&T witness Constable.

In its Proposed Order, Intrado argued that AT&T's proposed language contemplates that the parties will amend the ICA to set forth the specific interconnection arrangements to be utilized by the parties. Further, Intrado noted that AT&T's proposed language requires Intrado to provide notice beyond the ICA or amend the agreement to seek interconnection. Intrado does not agree with AT&T's requirement that it needs to provide notice beyond the ICA or amend the agreement to seek interconnection. According to Intrado, no further notice or action should be needed from Intrado to implement the interconnection arrangements set forth in the agreement other than

routine discussions between the parties' operational personnel. Intrado asserted that AT&T's language would impose additional, unnecessary steps on Intrado to effectuate its interconnection arrangements with AT&T. Moreover, Intrado contended that, in a world where timely response to customer requests is important, having any period longer than 30 days to make a network change is poor business. Thus, Intrado strongly opposes AT&T's language that would require Intrado to wait 120 days after an agreement is signed before the parties can interconnect their networks. Also, Intrado argued that it has proposed language that clarifies that Intrado will provide the additional notifications required by AT&T only to the extent it seeks additional points of interconnection with AT&T. Intrado asserted that its proposed language is reasonable, reflects the need to respond quickly to public safety requests, and should be adopted.

AT&T witness Constable explained that the dispute involves several sections of language in the 911 NIM Appendix. Under AT&T's proposed language, Section 2.1 would require that the parties consent to the network architecture that will be developed; Section 5.1 would require that Intrado provide notice of any new interconnection arrangements it wishes to establish; and, Section 5.4 would require each party to give 120 days' notice when adding or removing a switch from its network. According to witness Constable, the proposed language would reduce misunderstandings, facilitate Intrado's establishment of facility and trunking arrangements at a new AT&T Selective Router, and give the parties 120 days' notice when either party wishes to add or remove switches from its networks. Witness Constable explained that replacing a switching system requires more than the 30-day period suggested by Intrado in order to effect a smooth transition. In fact, witness Constable explained further that adding or removing a switch may take as much as a year due to long range planning, capital expenditures and the coordination required with other carriers.

The Public Staff stated in its Proposed Order that AT&T's proposed language contemplates that the parties will amend the ICA to set forth the specific interconnection arrangements to be utilized by the parties and that Intrado does not agree with AT&T's requirement that it needs to provide notice beyond the ICA or amend the agreement to seek interconnection. According to the Public Staff, Intrado believes that no further notice or action should be needed to implement the interconnection arrangements set forth in the agreement other than routine discussions between the parties' operational personnel. Intrado's proposed language also has clarified that, only to the extent it seeks additional points of interconnection with AT&T, Intrado will provide the additional notifications requested by AT&T. AT&T's language would impose additional, unnecessary steps on Intrado to effectuate its interconnection arrangements with AT&T.

The Public Staff noted that AT&T asserted that Appendix 911 NIM Section 2.1 provides that the parties will agree to the physical architecture plan in a particular interconnection area. AT&T simply proposes that the Parties document that plan prior to implementation. Such documentation will ensure that both Parties' understanding of the plan is the same - before either Party invests in its implementation - and will thus avoid potential disputes. In Appendix 911 NIM Section 2.4, AT&T requires Intrado to provide notification of its actual "intent" to change the parties' architecture plan, not to

simply notify AT&T of its request for such a change. A request does not necessarily indicate intention to proceed with a change. Intrado needs to notify AT&T using the proper form when it intends to interconnect to an AT&T Selective Router. Further, 120-days notice (rather than only 30) is appropriate when Intrado will add a switch to its network because adding a switch is a significant network change that affects every carrier providing service in that geographic area. Finally, the Public Staff recommended that the ICA should include the terms and conditions proposed by AT&T to address separate implementation activities for interconnection arrangements after the execution of the ICA.

After reviewing the parties' positions and the record proper, the Commission agrees with the Public Staff and AT&T that: (1) Intrado should notify AT&T when Intrado intends to interconnect to an AT&T Selective Router; and, (2) that either party should be required to give 120 days notice to add or remove a network switch. The ICA shall be revised accordingly.

In requiring this revision, we acknowledge that Intrado's opposition to AT&T's proposal is rooted partially in its reluctance to share its business plans with AT&T. In today's competitive environment, this reluctance is completely understandable. Ordinarily, when a competitor seeks to compete with an ILEC to provide telecommunications service, the Commission would take affirmative steps to minimize or avoid altogether any actions by the Commission which would result in Intrado's business plans being shared with or changed to accommodate AT&T. This, however, is not the ordinary situation. 911 and E911 providers routinely provide critical information on a real time basis to law enforcement officers, fire fighters, health care providers and other first responders which may, on occasion, mean the difference between life and death to a member of the public. As such, these 911/E911 services are extraordinarily important to the overall safety and welfare of the community.

As a result, the Commission believes that 911 and E911 networks must, to the extent possible, be designed and operated to ensure that the public can seamlessly and reliably access the network and that the operators of such network can accurately identify and transmit the location and other necessary information to the appropriate emergency services provider. To achieve this goal, it is necessary, in the Commission's opinion, for AT&T and Intrado to cooperate and coordinate their activities to preclude outages and minimize misdirected calls or other errors which could result in unnecessary loss of property and/or increased suffering or death. Undoubtedly, the degree of cooperation and coordination that we envision will impact Intrado's ability to respond as quickly as it would like to public safety requests. However, given the choices that we have been provided and our desire that the network be designed and operated to ensure seamless access and reliable information, the Commission finds the language proposed by AT&T with regard to notice required to add or replace a switching system to be more reasonable and more likely to produce the coordination necessary for a satisfactory interconnection between the parties.

CONCLUSIONS

Because 911 and E911 emergency services networks are responsible for ensuring that critical information is received from the public and transmitted to the correct emergency service providers in situations in which the well-being and safety of the individual providing the information and the public at large might be at risk, Intrado shall notify AT&T when Intrado intends to interconnect to an AT&T Selective Router in order to preclude outages and minimize misdirected calls or other errors which could result in unnecessary loss of property and/or increased suffering or death. In addition, either party to this ICA shall be required to give 120 days notice to add or remove a network switch.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

ISSUE NO. 16 – MATRIX ISSUE NO. 8(a): What terms and conditions should be included in the ICA to address access to 911/E911 database information when AT&T is the designated E911 service provider?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the ICA should include a requirement that the parties maintain interoperability between their networks to support the exchange of ALI information between the parties.

AT&T: AT&T asserted that it is not appropriate to impose upon AT&T a duty to maintain "ALI interoperability". AT&T further maintained that Intrado has proposed no definition for the term "interoperability", and the proposed language is impermissibly vague for this reason.

PUBLIC STAFF: The Public Staff stated that the parties should be required to revise the ICA 13-state Appendix 911 template that AT&T witness Constable provided in Revised Exhibit JEC-1 to: (1) remove the phrase "to support ALI interoperability" from Section 3.4.3; (2) remove Section 3.4.5 concerning the mutual sharing of steering tables; and (3) reflect consistent treatment of the parties' mutual responsibilities in the parallel Sections 3.4.3 and 5.4.3 and the parallel Sections 3.4.4 and 5.4.4. The Public Staff maintained that all of these changes should be incorporated into the final version of the ICA filed with the Commission in this proceeding.

DISCUSSION

This matrix issue concerns the following disputed language for Section 3.4.3 of Appendix 911 (See Revised Exhibit JEC-1):

> 3.4.3 Where AT&T manages the E911 Database, AT&T's E911 Database shall accept electronically transmitted files **to support ALI interoperability** that are based upon NENA recommended

standards. Manual (i.e. facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly.

Intrado proposed the inclusion of the bold and underlined language shown above, and AT&T and the Public Staff opposed the inclusion of this language.

Intrado asserted in its Proposed Order that it has proposed language to ensure that the parties can maintain interoperability between their databases when exchanging 911 traffic or transferring 911 calls between each party's selective router. Intrado stated that, for this reason, it requests that the parties adopt arrangements to enable access to ALI when performing call transfers via inter-selective router trunking.

Intrado recommended that the Commission conclude that the transfer of ALI information is critical for emergency services personnel to locate the 911 caller, especially for wireless or Voice over Internet Protocol (VoIP) calls, or even wireline calls where the caller cannot speak. Intrado noted that language regarding inter-selective router trunking and call transfer with ALI is also necessary to ensure interoperability between the parties' networks as contemplated by Section 251(c) of the Act.

Intrado also recommended that the Commission reject AT&T's contention that the term "interoperability" is vague or unknown. Intrado maintained that the term is well understood by those in the 911 industry to mean the ability of networks to seamlessly and transparently exchange information and function together. Intrado stated that, in addition, the FCC has defined "interoperability" in 47 C.F.R. § 51.325(b) as, "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged." Intrado argued that the proposed language should, therefore, be adopted for use in the parties' interconnection agreement. Further, Intrado recommended that the Commission conclude that interoperability of the parties' networks is critical to ensuring reliable 911/E911 services for North Carolina consumers and public safety agencies, including the exchange of ALI information between the parties. Intrado urged the Commission, therefore, to adopt Intrado's proposed language for 911 in Section 3.4.3.

AT&T witness Constable stated in his rebuttal testimony that the Commission should reject Intrado's proposed language in Section 3.4.3 because it serves no real purpose and will only create confusion. He noted that the term "ALI interoperability" is not defined in the interconnection agreement or in NENA standards and that the language is unnecessary because the parties already have detailed language regarding how ALI will be provided.

AT&T stated in its Proposed Order that the single dispute remaining about this issue involves Intrado's request that the Commission impose an "ALI interoperability" requirement upon AT&T. AT&T noted that, in Appendix 911, Section 3.4.3, Intrado proposes to obligate AT&T to provide "ALI interoperability". AT&T asserted that this term is not defined anywhere in the ICA or in NENA standards. AT&T maintained that witness Constable testified that the parties have already agreed as to how ALI will be

provided, so this language is unnecessary. AT&T recommended that the Commission find that no purpose would be served to require "ALI interoperability" when that term is undefined. AT&T recommended that the Commission adopt the language proposed by AT&T and reject the changes suggested by Intrado.

The Public Staff noted in its Proposed Order that provisions addressing database access appear in Appendix 911 of the 13-state template. The Public Staff maintained that Revised Exhibit JEC-1 is a draft of Appendix 911 showing the changes proposed by AT&T and Intrado. The Public Staff stated that Section 3.4 of the draft addresses database access in the event that AT&T is the designated provider of 911/E911 services. The Public Staff commented that Section 5.4 addresses database access if Intrado is the designated provider of 911/E911 services.

The Public Staff asserted that each of these sections contains four separate paragraphs. The Public Staff noted that paragraph 3.4.3 contains the language referring to ALI interoperability that AT&T witness Constable objected to in his testimony. The Public Staff provided the entire text of this paragraph, as follows:

> 3.4.3 Where AT&T manages the E911 Database, AT&T's E911 Database shall accept electronically transmitted files *to support ALI interoperability* that are based upon NENA recommended standards. Manual (i.e. facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly. (Italics added by the Public Staff and represents disputed language.)

The Public Staff stated that witness Constable specifically noted that the term "ALI interoperability" is not defined in the "Definitions" section of Appendix 911. The Public Staff further maintained that the phrase "to support ALI interoperability" used in paragraph 3.4.3 appears to add nothing of substance to the paragraph. Thus, the Public Staff recommended that the Commission direct the parties to delete this phrase from Appendix 911.

The Public Staff asserted that paragraph 3.4.5 of Appendix 911, which addressed the issue of steering tables, is absent from Revised Exhibit JEC-1. The Public Staff noted that witness Constable testified that this issue had been resolved, and his position concerning the steering tables issue and the resolution of that issue were not contested by Intrado. The Public Staff recommended that the Commission conclude that there is no issue left to resolve concerning paragraph 3.4.5 and that the paragraph should not be included in the interconnection agreement.

Finally, the Public Staff noted that there are certain subtle differences between Sections 3.4 and 5.4 of Appendix 911 that the parties did not directly address. The Public Staff stated that paragraph 3.4.3 provides that files electronically transmitted to AT&T's E911 database must be "based upon NENA recommended standards." The Public Staff maintained that paragraph 5.4.3, which sets a parallel requirement for files that will be transmitted electronically to Intrado's E911 database, requires that these

files be "based upon NENA standards." The Public Staff asserted that it is not certain that this slight difference in wording is significant relative to the parties' mutual responsibilities, but recommended that the Commission conclude that the requirements specified in these paragraphs should be identical. The Public Staff recommended that the Commission direct the parties to either remove the word "recommended" from paragraph 3.4.3 of Appendix 911 or add it to paragraph 5.4.3, whichever they prefer. The Public Staff noted that there are also significant differences between what should be parallel and identical language in paragraphs 3.4.4 and 5.4.4 concerning the parties' responsibilities. The Public Staff recommended that the Commission direct the parties to revise these paragraphs so that the mutual responsibilities and wording are consistent, and to include these revised paragraphs in the interconnection agreement.

The Commission notes that both Intrado and AT&T state in their Proposed Orders and Briefs that the only issue in contention in Matrix Issue No. 8(a) concerns the following highlighted language in Section 3.4.3 of Appendix 911 as outlined in Revised Exhibit JEC-1:

> 3.4.3 Where AT&T manages the E911 Database, AT&T's E911 Database shall accept electronically transmitted files **to support ALI interoperability** that are based upon NENA recommended standards. Manual (i.e. facsimile) entry shall be utilized only in the event that the DBMS is not functioning properly.

Intrado proposes the inclusion of the language highlighted above while AT&T and the Public Staff propose that the identified language be excluded from Section 3.4.3. Since this is the only issue that Intrado and AT&T identify as in dispute, it is the only issue the Commission will address. Intrado and AT&T can review the other proposals outlined by the Public Staff in its Proposed Order and negotiate changes to Section 3.4 and/or Section 5.4 as they deem appropriate.

After reviewing the record on the proposed inclusion of the phrase "to support ALI interoperability" in Section 3.4.3 of Appendix 911, the Commission is not persuaded that the inclusion of this language is necessary. Both AT&T and the Public Staff question the necessity for including this language, and Intrado has not provided any convincing arguments that this phrase is of any importance or significance. Therefore, the Commission agrees with AT&T and the Public Staff that it is not appropriate to include Intrado's proposed language as identified above in Section 3.4.3.

CONCLUSIONS

The Commission concludes that Section 3.4.3 of Appendix 911 as outlined in Revised Exhibit JEC-1 should read as follows:

> 3.4.3 Where AT&T manages the E911 Database, AT&T's E911 Database shall accept electronically transmitted files that are based upon NENA recommended standards. Manual (i.e. facsimile) entry

shall be utilized only in the event that the DBMS is not functioning properly.

Intrado and AT&T can review the other proposals outlined by the Public Staff in its Proposed Order and negotiate changes to Section 3.4 and/or Section 5.4 as they deem appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

ISSUE NO. 17 – MATRIX ISSUE NO. 10: What 911/E911-related terms should be included in the ICA and how should those terms be defined?

POSITIONS OF PARTIES

INTRADO: The only 911/E911-related definition at issue between the parties is the definition of "911 Trunk." Intrado proposed to define "911 Trunk" as a trunk from either AT&T's End Office or Intrado's switch to the E911 System. AT&T, however, objects to the use of "End Office" and would prefer the language to state that it is a trunk from either party's switch to the E911 System. The inclusion of "End Office" when referring to AT&T's switch is appropriate because any trunks to the E911 System should come directly from the AT&T End Office where the end user making the 911 call is located. Industry standards recommend identifiable trunk groups from each end office when calls from multiple end offices are directed to the same PSAP. Inclusion of the term "End Office" ensures that AT&T will abide by default routing treatment when transmitting calls to the E911 System.

AT&T: The parties disagree regarding the definition of the term "911 Trunk" or "E911 Trunk." Intrado's additional language could inappropriately require AT&T to provide direct trunking from its end offices to Intrado's selective router – even if that required AT&T to implement extensive network modifications to support Class Marking.

PUBLIC STAFF: The ICA should not define a 911/E911-Trunk as a trunk from AT&T's End Office.

DISCUSSION

The testimony regarding this issue is limited. This issue was addressed by Intrado witness Clugy and AT&T witness Constable. Intrado witness Clugy testified that the term "End Office" was inserted because it implied the originating office and was a defined term in the agreement. In its Proposed Order, Intrado argued further that using "End Office" is appropriate because the definition is intended to describe the portion of the network carrying the 911 call from the originating end office to the selective router. According to Intrado, its proposed definition more accurately describes the 911 transport piece from the caller's originating end office to a selective router, and should therefore be adopted.

AT&T witness Constable did not directly address the definition of "911 Trunk" in his testimony, and the only language detailing AT&T's position is found in the Revised Joint Issues Matrix filed with the Commission on August 6, 2008. AT&T stated that the parties disagree regarding the definition of the term "911 Trunk" or "E911 Trunk" and that Intrado's additional language could inappropriately require AT&T to provide direct trunking from its end offices to Intrado's selective router – even if that required AT&T to implement extensive network modifications to support Class Marking.

AT&T referenced Matrix Issue No. 3(a) to further clarify its position in this regard. In his testimony concerning Matrix Issue No. 3(a) discussing how AT&T's end user 911 traffic would be routed to a PSAP served by Intrado, AT&T witness Constable stated that, if an AT&T End Office must connect to the E911 System as proposed by Intrado, then AT&T would conceivably have to establish dedicated trunk groups to each selective router using Intrado's proposed "class marking" translations.

In its Proposed Order, the Public Staff argued that this issue is closely connected to Matrix Issue No. 3(a) concerning trunking arrangements when Intrado provides the selective router to the PSAP. According to the Public Staff, including language stating that a "911 Trunk" is a trunk from AT&T's End Office in the ICA would incorrectly imply that traffic from an AT&T end office is directly routed to the Intrado selective router in those instances in which wire centers are split between PSAP jurisdictions. The Public Staff further noted that the resolution of that issue is currently disputed and is dependent upon whether the Commission adopts AT&T's primary/secondary selective router proposal or Intrado's "class marking" proposal. Although the Public Staff's discussion in this section of the Proposed Order does not explicitly state the Public Staff's preference, the Public Staff does find that AT&T's primary/secondary router proposal is more appropriate in its discussion of Matrix Issue No. 3. In accord with this finding, the Public Staff recommended that the term "End Office" should be excluded from the definition of a 911/E911-Trunk.

We note that this is a limited dispute between the parties involving language in the Appendix 911, Section 2.3, which concerns the definition of the term "911 Trunk" or "E911 Trunk." The current positions of the parties are succinctly reflected in the Revised Joint Issues Matrix, filed August 6, 2008. Specifically, Intrado proposes to define a 911 Trunk as running from either AT&T's End Office or Intrado's switch. AT&T has no objection to the proposed reference to Intrado's switch. However, AT&T contends that Intrado's proposed reference to AT&T's End Office could be read to require AT&T to provide direct trunking from its end offices to Intrado's selective routers, even if this routing required AT&T to implement extensive network modifications to support class marking. We agree with AT&T that the language proposed by Intrado could be read in this fashion.

This interpretation could potentially conflict with our ruling on Matrix Issue No. 3(a), discussed above in which we determined that the ICA shall include provisions whereby AT&T will provide inter-selective routing as it does at present, i.e., by the designation of primary and secondary routers. Applying this process, there will likely be

situations in which AT&T is the primary router. In these cases, trunks will run from the AT&T switch (*i.e.*, the selective router) to Intrado's switch (the selective router). Thus, the definition of "trunk" proposed by Intrado would be inconsistent with the practice we have ordered.

Moreover, running trunks from an AT&T end office to Intrado's switch in every instance could only be accomplished by the adoption of an alternative to the current practice, such as class marking or "line attribute routing", which this Commission rejected as part of our ruling on Matrix Issue No. 3(a). For these reasons, we believe that the language proposed by AT&T is preferable, as well as consistent with our decision on Matrix Issue No. 3(a). Therefore, we hereby adopt AT&T's proposed language. The term "End Office" should be excluded from the definition of a 911/E911-Trunk.

CONCLUSIONS

The Commission concludes that Intrado's proposed language regarding the definition of "911 Trunk" or "E911 Trunk" could inappropriately require AT&T to provide direct trunking from its end offices to Intrado's selective router, even if that required AT&T to implement extensive network modifications to support Class Marking or Line Attribute Routing. For this reason, we reject Intrado's proposed definition and adopt AT&T's proposed definition.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

ISSUE NO. 18 – MATRIX ISSUE NO. 13(a): What subset of traffic, if any, should be eligible for intercarrier compensation when exchanged between the Parties?

POSITIONS OF PARTIES

INTRADO: AT&T's proposed language improperly classifies the types of traffic subject to intercarrier compensation and imposes onerous terms and conditions on the parties' exchange of intercarrier compensation that are not consistent with the law. AT&T's proposed language limits the traffic eligible for compensation between the parties to "wireline" service or "dialtone".

AT&T: The parties disagree as to the proper definitions for "Section 251(b)(5) Traffic", "ISP-Bound Traffic" and "Switched Access Traffic" as those terms appear in the 13-state template. AT&T defines these terms with specificity to clearly articulate the conditions under which traffic is subject to intercarrier compensation.

PUBLIC STAFF: The Commission should require the parties to modify the definitions of Section 251(b)(5) Traffic, ISP-Bound Traffic, and Switched Access Traffic in the GTC section and the appendices to comport with current FCC decisions and orders consistent with the Commission's understanding of those decisions and orders. The

Appendix Intercarrier Compensation and Appendix ITR should retain the references to "wireline" and "dialtone" service.

DISCUSSION

According to Intrado, this issue deals with the parties' exchange of non-911 traffic. Intrado stated that AT&T's language presents several problems and is not consistent with current FCC regulations.

First, Intrado stated that AT&T's language uses the term "local" to classify traffic subject to reciprocal compensation. Intrado observed that the FCC determined that AT&T's reliance on the characterization of traffic as local or non-local to determine whether reciprocal compensation obligations applied was incorrect. Intrado stated that the FCC determined that all telecommunications is subject to reciprocal compensation under Section 251(b)(5) of the Act except for those specific types of traffic carved out by Section 251(g) – exchange access, information access, and exchange services for such access. As a result of these findings the FCC removed the term local from its rules when describing the subset of telecommunications traffic that is subject to reciprocal compensation. Intrado also stated that the FCC determined that it should refrain from generically describing traffic as local traffic because the term local traffic is particularly susceptible to varying meanings and, significantly, is not a term in Section 251 (b)(5) or Section 251(g) of the Act. Intrado contended that AT&T's proposed definition for "Section 251(b)(5) Traffic" and its proposed definition for "ISP-Bound Traffic" requires the originating party and the terminating party to be located in the same ILEC Local Exchange Area or in an area that is subject to an Extended Area Service (EAS) arrangement. Intrado argued that this would require the call to be local and neither the FCC's *ISP Remand Order* nor Section 51.703 of the FCC's rules contain such qualifications because the FCC specifically found that Section 251(b)(5) applies to all traffic.

Second, Intrado stated that AT&T's proposed definition of "Switched Access Traffic" (i.e., traffic that is not subject to reciprocal compensation but instead is subject to higher access charges) includes "traffic that . . . (ii) originates from the End User's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology." Intrado contended that this definition appears to encompass interconnected VoIP services. Intrado asserted that the FCC defines "access service" as services and facilities provided for the origination and termination of any interstate or foreign telecommunication service. Intrado stated that the FCC has not determined whether interconnected VoIP services are telecommunications services or information services, and thus has not determined that interconnected VoIP services are subject to switched access charges. Intrado further stated that this fact is borne out by AT&T's recent request to the FCC for a declaratory ruling that IP-based traffic such as VoIP is subject to access charges. Intrado argued that AT&T should not be permitted to impose obligations on Intrado in the context of an agreement that AT&T has admitted by its own pleadings to the FCC are not required. Intrado suggested that AT&T's proposed

language goes beyond the parameters of the FCC's current rules regarding switched access services.

Third, Intrado stated that AT&T's proposed language would limit reciprocal compensation to traffic determined to be "wireline" or "dialtone," neither of which is defined in the ICA. Intrado further stated that FCC Rule 51.703(a) and the *ISP Remand Order*, by contrast, speak in terms of telecommunications traffic, not wireline or dialtone and therefore, AT&T's arguments that these terms are proper because this is not a wireless agreement are unavailing. Intrado does not offer wireless services and thus believes it does not need an ICA covering "wireless" services. Intrado stated that, as interconnected co-carriers, it may deliver wireless traffic to AT&T to the extent Intrado is providing telecommunications services to a wireless provider, and that wireless provider's customers call an AT&T customer.

AT&T first noted that, specifically, the parties disagree as to the proper definitions for "Section 251(b)(5) Traffic", "ISP-Bound Traffic" and "Switched Access Traffic." Further, the parties disagree regarding the application of these terms to other provisions in the ICA.

AT&T witness Pellerin asserted that AT&T's proposed definition for Section 251(b)(5) traffic reflects the specific criteria that must be applied to determine what traffic is subject to reciprocal compensation. In pertinent part AT&T stated that, "Section 251(b)(5) traffic shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are: (a) both physically located in the same ILEC Local Exchange Area. . . or (b) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. . ."

AT&T commented that Intrado is incorrect in its claim that AT&T's proposed definition is inconsistent with Section 251(b)(5) traffic because the FCC does not use the term "local" in describing this traffic. However, AT&T stated that, "in the ISP Remand Order, the FCC dispensed with using "local" as the term for traffic subject to reciprocal compensation under 251(b)(5), but reaffirmed that Section 251(b)(5) reciprocal compensation only applies to traffic that originates and terminates in the same exchange." In addition, AT&T noted that FCC Rule 701(b) states that Section 251(b)(5) reciprocal compensation is inapplicable to traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.

Regarding ISP-Bound Traffic, AT&T stated that it proposed the following definition, in pertinent part, for ISP-Bound Traffic: ISP-Bound Traffic shall mean telecommunications traffic exchanged between CLP and AT&T as defined in the ISP Compensation Order, in which the originating End User of one Party and the ISP served by the other Party are: (a) both physically located in the same ILEC Local Exchange Area. . . or (b) both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. . ." AT&T contended that its proposed definition of ISP-Bound Traffic clearly articulates what is intended.

Regarding Switched Access Traffic, AT&T commented that it has proposed specific language to define Switched Access Traffic, whereas, Intrado has proposed a general reference to applicable law. AT&T proposed adding the following language to the definition of Switched Access Traffic:

> ". . . all traffic that originates from an End User physically located in one local exchange and delivered for termination to an End User physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in AT&T's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the End User's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology."

AT&T contended that its proposed definition was also previously adopted by the PUC of Ohio in the Telcove Arbitration proceeding.

Last, AT&T asserted that language in Section 1.2 clarifies that Appendix IC applies to Intrado's "wireline local telephone exchange (dialtone) service." AT&T stated that, because Intrado has requested a wireline ICA, it should not deliver wireless traffic to AT&T over local interconnection trunks pursuant to this Agreement.

In summary, AT&T noted that, it proposed language for the definitions of "Section 251(b)(5) Traffic", "ISP-Bound Traffic", and "Switched Access Traffic" is reasonable, and complies with federal law.

Regarding Section 251(b)(5) Traffic, the Public Staff noted that AT&T's proposed language, unlike Intrado's, reflected the position that the physical location of the originating and terminating callers is determinative of whether a call is subject to reciprocal compensation requirements. The Public Staff stated that, during cross examination, AT&T witness Pellerin acknowledged that the FCC and the D.C. Court of Appeals were still involved in a dispute over what constitutes Section 251(b)(5) traffic. Witness Pellerin contended that the FCC's prior rulings had not been vacated to date, and that they currently were still in effect.

The Public Staff noted that the Commission has ruled in a previous arbitration case involving Global NAPs and Verizon South that the traffic eligible for reciprocal compensation must include intraLATA traffic between calling and called parties within the same local calling area. However, the determination of whether the call was local (and therefore, subject to Section 251(b)(5) reciprocal compensation) was based on whether the originating and terminating NPA-NXX were assigned to the same

exchange, or to exchanges that shared the same local calling area, as defined by the originating carrier. It was not necessary for the calling and called parties to be physically located within the same local calling area during the call.

Therefore, the Public Staff recommended that the Commission should conclude that the definition of Section 251(b)(5) traffic proposed by AT&T is inconsistent with the prior decision of the Commission and that it is appropriate to replace AT&T's proposed language with the following language:

> Section 251(b)(5) Traffic subject to intercarrier compensation obligations shall include all intraLATA telecommunications traffic in which the calling party's NPA-NXX and the called party's NPA-NXX are assigned to an exchange that share the same local calling area, as defined by the carrier originating the call.
>
> The parties should promptly amend this interconnection agreement to comply with any FCC or North Carolina Utilities Commission decisions that modify the parties' intercarrier compensation obligations with respect to Section 251(b)(5) Traffic.

With respect to the definition of ISP-Bound Traffic, the Public Staff commented that neither party provided meaningful support for its proposed definition of ISP-Bound Traffic. In light of the lack of evidence in the record and the apparent fact that the only significant FCC Order that has attempted to define the nature of ISP-Bound Traffic is the FCC's ISP Remand Order, previously cited by AT&T in support of its proposed language concerning Section 251(b)(5) Traffic, the Public Staff suggested the adoption of Intrado's proposed definition, which explicitly references the FCC Order. The Public Staff also suggested that the Commission should append the following sentence to Intrado's definition:

> The parties shall promptly amend this interconnection agreement to comply with any FCC or North Carolina Utilities Commission decisions that modify this definition or the parties' intercarrier compensation obligations with respect to ISP-Bound Traffic.

The Public Staff stated that AT&T's proposed definition for Switched Access Traffic conforms to the FCC's current views on what constitutes that class of traffic and provides solid guidance to the parties concerning the applicability of access charges to that traffic. The one exception to AT&T's definition is to remove the language which states that the end users are to be physically located in a local exchange to the end users having an NPA-NXX associated with a local exchange. AT&T's proposed definition of Switched Access:

> The parties shall promptly amend this interconnection agreement to comply with any FCC or North Carolina Utilities Commission decisions

that modify this definition or the parties' intercarrier compensation obligations with respect to Switched Access Traffic.

Finally, the Public Staff noted that there remained contention over whether the proposed language would limit compensable traffic to wireline or dialtone traffic. The Public Staff stated that the parties should retain the references to wireline and dialtone traffic in Appendix IC and Appendix ITR of the ICA. The Public Staff asserted that these terms reflect the apparent understanding between the parties that the rates, terms, and conditions were meant to apply exclusively to wireline traffic.

As pointed out by the Public Staff, the Commission has ruled in a previous arbitration case involving Global NAPs and Verizon South that the traffic eligible for reciprocal compensation must include intraLATA traffic between calling and called parties within the same local calling area. As such, the determination of whether the call was local (and therefore, subject to Section 251(b)(5) reciprocal compensation) was based on whether the originating and terminating NPA-NXXs were assigned to the same exchange, or to exchanges that shared the same local calling area, as defined by the originating carrier. It was not necessary for the calling and called parties to be physically located within the same local calling area during the call. Therefore, for the reasons presented by the Public Staff, the Commission agrees with the classes of traffic as detailed and the related compensation scheme for each class of traffic.

The Commission concludes that definitions for Section 251(b)(5) Traffic, ISP-Bound Traffic, and Switched Access Traffic should be adopted and modified as suggested by the Public Staff as reflected in the above comments. The Commission also agrees that the ICA between the parties is for the exchange of "wireline" and "dialtone" local exchange traffic, as characterized by AT&T. The Commission agrees with the Public Staff that these terms reflect the traditional practice between service providers that the rates, terms, and conditions were meant to apply exclusively to wireline traffic.

CONCLUSIONS

The Commission concludes that the parties shall modify the definitions of Section 251(b)(5) Traffic, ISP-Bound Traffic, and Switched Access Traffic in the GTC section and the appendices to comport with current FCC decisions and orders and to be consistent with the Commission's understanding of those decisions and orders. Also, Appendix IC and Appendix ITR shall retain the references to "wireline" and "dialtone" service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

ISSUE NO. 19 - MATRIX ISSUE NO. 13(b): Should the parties cooperate to eliminate misrouted access traffic?

POSITIONS OF PARTIES

INTRADO: Intrado is willing to work with AT&T to eliminate misrouted access traffic. AT&T's language does not accurately state the current requirements for Switched Access Traffic and would require Intrado to engage in unlawful steps such as self-help and blocking of calls.

AT&T: AT&T proposed that Intrado assist AT&T in taking action to remove Switched Access Traffic improperly routed over local interconnection trunks to switched access trunks.

PUBLIC STAFF: Language specifying the actions to be taken to remove Switched Access Traffic is appropriate for inclusion in Section 16.2 of Appendix IC of the parties' agreement. However, blocking of switched access traffic should not be included as an option.

DISCUSSION

Intrado stated that it has revised the language to indicate that the parties will cooperate to address misrouted access traffic consistent with FCC requirements. Intrado argued that AT&T's proposed language would require Intrado to agree to exercise "self-help" remedies or block misrouted access traffic. Intrado contended that the blocking of traffic is not in the public interest and if AT&T wants to take action against another carrier, then it should do so without requiring Intrado's involvement. Intrado stated that AT&T seeks to require it to engage in certain actions against third parties for misrouted access traffic.

AT&T stated that the parties disagree as to how to remedy a situation in which Switched Access Traffic is improperly routed to local interconnection trunks. AT&T contended that Intrado objects to language that would set forth specifically what this cooperation would entail, including jointly filing a complaint with this Commission. AT&T suggested adding language to the appropriate sections of the interconnection agreement to allow for the blocking of misrouted access traffic onto local interconnection trunks. AT&T commented that Intrado's proposal to address this problem without a defined process to do so would not provide AT&T with a means to prevent fraudulent behavior such as traffic washing and related access avoidance schemes by third parties for traffic Intrado delivers to AT&T.

The Public Staff stated that the parties should be encouraged to work together to ensure that toll traffic is identified and routed properly and in a manner that allows assessment of legitimate access charges. The Public Staff stated that blocking should not be considered an appropriate remedy for eliminating such traffic from local interconnections trunks. The Public Staff suggested that the parties adopt the following language in Section 16.2 of Appendix IC:

> If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the

delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify traffic with the goal of removing such traffic from the local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 16.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other Party, the terminating Party may file a complaint or take other appropriate action with the applicable Commission in order to seek removal of the traffic from local trunk groups or appropriate compensation from the third party competitive local exchange carrier delivering such traffic.

After reviewing the record proper, the Commission is of the opinion that the Public Staff's proposed language on the management of misrouted access traffic is appropriate and should be added to the Parties' interconnection agreement. Further, we agree with the Public Staff that blocking is not an appropriate remedy for eliminating misrouted traffic. The Commission believes that the parties should work cooperatively to identify and eliminate misrouted access traffic to local interconnection trunk groups and to insure proper compensation to the terminating party.

CONCLUSIONS

For the reasons articulated previously, the Commission concludes that the Public Staff's proposed language specifying the actions to be taken to remove Switched Access traffic is appropriate for inclusion in Section 16.2 of Appendix IC of the parties' ICA. Also, the blocking of switched access traffic shall not be included in the ICA as an option.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

ISSUE NO. 20 – MATRIX ISSUE NO. 15: Should the ICA permit the retroactive application of charges that are not prohibited by an order or other change in law?

POSITIONS OF PARTIES

INTRADO: Intrado agreed that the ICA should include terms and conditions to address subsequent modifications to the ICA and changes in law. Intrado however, disagreed with AT&T's proposed language discussing how such modifications will be implemented. AT&T proposed language wherein retroactive compensation adjustments will apply "uniformly" to all traffic exchanged as "local'" calls under the agreement. According to Intrado, this broad language could allow AT&T to make retroactive compensation adjustments for traffic that is not affected by a change of law. Therefore, Intrado has proposed language that would apply retroactive compensation adjustments consistent with intervening law.

AT&T: The parties disagree on terms and conditions for retroactive treatment following modification or nullification of the compensation plan (ISP Compensation Plan) set forth in the FCC's *ISP Compensation Order*. AT&T proposed in Appendix IC Section 4.2.1 that retroactive treatment would apply to traffic exchanged as "local calls." AT&T stated that this is the appropriate classification of traffic to which a retroactive adjustment would apply. Intrado objected to this language, preferring a vague reference to intervening law, which is redundant and therefore unnecessary.

PUBLIC STAFF: The ICA should permit the retroactive application of charges that are not prohibited by an order or other change in law.

DISCUSSION

This issue was addressed by Intrado witness Clugy and AT&T witness Pellerin. Both parties appear to agree that the ICA should include terms and conditions to address subsequent modifications to the ICA and changes in law. The parties are seeking to include language in anticipation of a change of law regarding reciprocal compensation of "local" traffic pursuant to the *ISP Compensation Order*.[19] Intrado contended that AT&T's proposed language indicating that retroactive compensation adjustments will apply "uniformly" to all traffic exchanged as "local" calls under the agreement is so broad it could apply to traffic not affected by a change in law, and AT&T contended that Intrado's language is vague, redundant, and unnecessary. Further, Intrado stated that the ICA should limit the application of retroactive compensation adjustments to those specifically ordered by intervening law and that Intrado's language should be adopted.

By contrast, AT&T proposed that retroactive treatment would apply to traffic exchanged as "local calls." Witness Pellerin testified this is the appropriate classification of traffic to which a retroactive adjustment would apply. Intrado objected to retroactive treatment for local calls and advocated as an alternative the additional language "to which Intervening Law applies". AT&T argued that the contractual provision at issue already states that ". . . the Parties intend for retroactive compensation adjustments, *to the extent they are ordered, by Intervening Law*, to apply to all traffic." According to AT&T, including an additional reference to "Intervening Law" to the end of this sentence, as Intrado proposed, is redundant and, therefore unnecessary.

In its Proposed Order, the Public Staff stated that the ICA should provide for a possible change of law regarding reciprocal compensation. According to the Public Staff, the ICA language should be clear that any such change of law would only be effective as to the particular type of traffic affected by the change of law. Finally, the Public Staff stated that it does not believe that AT&T's language would be

[19] Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) (*ISP Compensation Order*).

misinterpreted in the manner proposed by Intrado and that Intrado's proposed language is, therefore, unnecessary.

The Commission agrees with all parties that the ICA should provide for a possible change of law regarding reciprocal compensation. Certainly both parties should be clear that any such change of law would only be effective as to the particular type of traffic affected by the change of law. After carefully reviewing the contentions of the parties and the language proposed by AT&T, the Commission agrees with the reasoning advanced by the Public Staff that AT&T's language would not be interpreted so broadly that it could apply to traffic not affected by a change in law. Thus, Intrado's proposed language is unnecessary.

CONCLUSIONS

The Commission finds that Intrado's proposed language is redundant and unnecessary. We find that the AT&T-proposed language is the better alternative.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

ISSUE NO. 21 - MATRIX ISSUE NO. 18: (a) What term should apply to the interconnection agreement? (b) When should Intrado notify AT&T that it seeks to pursue a successor ICA?

POSITIONS OF PARTIES

INTRADO: Intrado stated that, in connection with the parties' negotiations for an Ohio ICA, they had agreed to contract language to govern the term and termination of the ICA. Intrado sees no reason to negotiate new generic provisions governing the term and termination for use in North Carolina when the parties have already reached an agreement on such provisions that are unaffected by generic provisions.

AT&T: AT&T noted in the Cover Letter to its Proposed Order that the parties had reached agreement on language to be placed in the 13-state template in Ohio and that there was therefore no need for any substantive consideration of Matrix Issue No. 18, subparts (a) and (b). The parties have agreed to a three-year term for the ICA and, after notice of expiration, a right to request a successor agreement from AT&T within 10 days. AT&T has agreed to modify its 9-state template language.

PUBLIC STAFF: There should be a three-year term for the ICA. When one party seeks to terminate the ICA, Intrado has the right to request a successor agreement from AT&T within 10 days.

DISCUSSION

Based on the record in this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 18 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 18.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

ISSUE NO. 22 – MATRIX ISSUE NO. 20: What are the appropriate terms and conditions regarding billing and invoicing audits?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 20. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio. AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff stated that the interconnection agreement should reflect the language agreed to by the parties in the Ohio interconnection agreement with respect to the terms and conditions regarding billing and invoicing audits.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 20 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 20.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

ISSUE NO. 23 – MATRIX ISSUE NO. 22: Should Intrado be permitted to assign the ICA to an affiliated entity? If so, what restrictions, if any should apply if that affiliate has an effective ICA with AT&T?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 22. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio. AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff asserted that as long as an affiliate is properly certified in North Carolina and the Commission has received proper documentation, it is acceptable for the ICA to provide that it can be assigned to an affiliate if that affiliate's ICA has been terminated prior to such assignment.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 22 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 22.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

ISSUE NO. 24 – MATRIX ISSUE NO. 23: Should AT&T be permitted to recover its costs, on an individual case basis, for performing specific administrative activities? If so, what are the specific administrative activities?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 23. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio. AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff stated that there appears to be no significant dispute between the parties with respect to the 13-state template language Intrado proposes to include in the North Carolina ICA. The Public Staff noted that this language is presented in Section 6.3 of the General Terms and Conditions of the December 18, 2007 draft agreement Intrado filed with its arbitration petition. The Public Staff recommended that the Commission require the parties to incorporate this language, suitably modified to reflect any North Carolina-specific requirements and terminology, into the ICA they file pursuant to the Commission's Order in this docket.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 23 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 23.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24 AND 25

ISSUE NO. 25 – MATRIX ISSUE NO. 24: What limitation of liability and/or indemnification language should be included in the ICA?

POSITIONS OF PARTIES

INTRADO: Intrado takes issue with AT&T's language that indicates that AT&T will not be liable to Intrado, Intrado's end user, or any other person for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911. In Intrado's view, this is very broad language and gives AT&T unlimited protection from liability. AT&T should not have unlimited protection from liability, especially for actions that are attributable to AT&T.

AT&T: AT&T should not be liable to Intrado, Intrado's end user, or any other person for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911. AT&T disagrees with Intrado's proposed language as vague and ambiguous.

PUBLIC STAFF: The word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person". AT&T may limit its liability for damages caused by unintentional or negligent acts or omissions, but not for liability for willful, wanton, or intentional acts or omissions.

DISCUSSION

This issue was addressed by Intrado witness Clugy and AT&T witness Pellerin.

The parties have reached resolution on the majority of the limitation of liability and indemnification provisions of the ICA in connection with their Ohio negotiations (either via a negotiated resolution or Intrado's acceptance of AT&T's originally proposed language). Two issues, however, remain for resolution.

The first issue is whether AT&T may limit its liability for losses arising from the provision of 911 services. AT&T's language indicates that it will not be liable to Intrado, Intrado's end user, or any other person for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911. According to Intrado, this is very broad language and gives AT&T unlimited protection from liability. Intrado contended that carriers typically cannot limit their liability for errors that are caused by gross negligence or willful misconduct, but AT&T's language does just that. Intrado has, therefore, proposed language that would make AT&T liable for losses if the provision of access to 911 service or errors, interruptions, defects, failures, or malfunctions of 911 were attributable to AT&T. AT&T asserted that the language proposed by Intrado would allow Intrado and/or its customers to hold AT&T liable for personal injury, death, destruction of property for system and/or equipment errors,

interruptions, defects, or malfunctions of 911 service that result from the normal course of doing business.

In its Proposed Order, the Public Staff asserted that the parties' positions lie on either end of the spectrum. Nevertheless, the Public Staff believes that it is appropriate to protect AT&T from liability for unintentional or negligent acts or omissions, but to potentially allow liability for willful, wanton, or intentional acts or omissions. The Public Staff reasoned that there are more likely to be "life or death" situations involved with the provision of 911 service, so it is important that the parties exercise the utmost degree of care to ensure that the service is of the highest quality.

As the Public Staff correctly observed, the parties' positions on this issue lie on either end of the spectrum. At one end of the spectrum, AT&T believes that it should bear no liability for any error, no matter how egregious the error. At the other end, Intrado believes that AT&T should bear unlimited liability for an error, no matter how simple or innocent. In this proceeding, Intrado and AT&T individually asked the Commission to choose either one or the other of the proposals. Both parties have advanced various arguments in support of their individual preference. After carefully reviewing the arguments of the parties and the evidence presented in this proceeding, we decline to adopt either of the options proposed by the parties and, instead, for the reasons more fully articulated below, adopt the more moderate alternative proposed by the Public Staff.

Our Supreme Court has held that carriers typically cannot limit their liability for errors that are caused by gross negligence or willful misconduct. *See, e.g.*, *Jordan v. Eastern Transit & Storage Co.*, 266 N.C. 156, 162 (1966) ("[I]t has long been held that, in absence of statutory authorization, a common carrier or other public utility may not contract for its freedom from liability for injury caused by its negligence in the regular course of its business."); *Hall v. Sinclair Refining Co.*, 242 N.C. 707, 709 (1955) (finding that a contract provision that exempts a party from liability for harm resulting from its own negligence is not favored by North Carolina law). Similarly, this Commission has previously rejected interconnection agreement language that would completely absolve an ILEC from some continuing responsibility for its misconduct. (*See* Docket No. P-1262, Sub 2, *In re Petition for Arbitration of Time Warner Cable Information Services (North Carolina), LLC for Arbitration with LEXCOM Telephone Company*, *Recommended Arbitration Order* (Nov. 26, 2007). In the *LEXCOM* decision, we stated:

> In the absence of such negotiated agreement, the Commission firmly believes that it is unwise to allow LEXCOM to disclaim any and all liability for errors or omissions in its handling of directory listings, including errors and omissions that are a result of its negligence. Were it to do so, the Commission would be allowing LEXCOM to shift complete responsibility for ensuring the accuracy of the directory from LEXCOM, the entity that has statutory responsibility for providing the directory, to TWCIS, a party that is, by statute, entitled to nondiscriminatory access to directory listings

and, more importantly, a competitor with the ILEC in the telecommunications services market.

In accordance with this clearly articulated precedent, the Commission continues to believe that it is unwise to allow an ILEC such as AT&T to shift complete responsibility for any errors that AT&T commits to its competitor in the telecommunications market. We, therefore, reject AT&T's proposal which broadly insulates AT&T from liability for any acts or omissions, including willful, wanton, and intentional acts.

Although it is clear that our precedent favors exposing AT&T to some measure of liability for errors attributable to AT&T, we find Intrado's proposed language, which subjects AT&T to unlimited liability for any error, no matter how innocuous, equally objectionable to AT&T's efforts to absolve itself from any responsibility for its errors. In our opinion, subjecting AT&T to such open-ended liability for seemingly minor errors is not in the public interest. We believe, as AT&T contended, that this language, if adopted, would or could potentially make providing 911/E911 service cost-prohibitive, and that no carrier would reasonably be able (or willing) to provide 911 service without an exponential rate increase. Because of the unique importance of 911/E911 to the public, we dare not risk that either of those eventualities could occur. Thus, we also reject Intrado's proposed language that would expose AT&T to unlimited liability.

By rejecting both parties' solution, we are left with a dilemma as to how to resolve this open issue. The question is: How can we, consistent with our responsibilities under the Act, determine what liability each party should bear for errors and omissions committed by the other party in the implementation of an ICA? When faced with this situation in other arbitration dockets, the Commission has been reluctant to impose disputed limitation of liability and/or indemnification language on the parties when they have been unable to reach agreement through arms length negotiations. See *In re MCI Telecommunications*, Docket No. P-141, Sub 29, Order Ruling on Objections, Comments, Unresolved Issues and Composite Agreement, pp. 22-23, April 11, 1997, (1997 WL 233032), *In re MCImetro Access Transmission Services*, Docket No. P-474, Sub 10, Recommended Arbitration Order, pp. 107-109, April 3, 2001, (2001 WL 468490). Oftentimes, we have directed the parties to begin negotiations anew with the assistance of the Public Staff, a neutral and detached party. See *Sprint v. Randolph Arbitration*, Docket P-294, Sub 30, Recommended Arbitration Order, pp. 35-36, August 23, 2008. In the latter case, we required renewed, Public Staff-assisted negotiations when the fully developed record was not adequate to fashion a solution to the issue in question and the parties showed some willingness to resolve the dispute.

Without a doubt, the Commission would prefer the latter solution. This case, however, does not lend itself to that option. The record and the parties' positions on this issue are fully developed; the parties have not resolved their dispute even though they have engaged in extensive pre-trial (and, presumably, post-trial) arms-length negotiations; and, perhaps, most importantly, the Public Staff has taken a position in the current docket which is adverse to both AT&T and Intrado.

Thus, we are left with the choice of sending the parties back for further negotiations unassisted, imposing a Commission created solution on the parties, or adopting the "compromise" recommendation made by the Public Staff. After carefully examining the recommendation of the Public Staff and weighing the amount of time and effort that the parties and the Commission have expended in reaching this point in the proceeding, we choose the latter option. In doing so, we find that the Public Staff's recommendation protecting AT&T from liability for unintentional or negligent acts or omissions---but allowing potential liability for willful, wanton, or intentional acts or omissions---is nuanced, balanced and in the public interest. The recommendation relieves AT&T from the prospect of unlimited liability for errors and mistakes that are bound to occur during the course of a normal business operation providing 911/E911 emergency service and meets AT&T's concern that the cost of providing such service would be prohibitive as a result. At the same time, the Public Staff's proposal assures the public and Intrado that 911/E911 service is being responsibly provided by a service provider that is attentive to its business and mindful of the consequences of failing to provide the highest quality service.

Accordingly, we conclude that AT&T and Intrado shall include language in the ICA that limits AT&T's liability for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911 that are the result of unintentional or negligent acts by AT&T and/or its agent. The ICA shall also state that AT&T may be liable for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911 that are the result of gross negligence and /or willful misconduct.

The second, less difficult, issue deals with AT&T's proposal to change the term "End User" to the word "customer". The provision discussed by witness Pellerin not only limits the liability to "End Users", but also to "any other Person". The definition of "Person" appears to cover every type of entity, including "customers". With the limitation of liability applying to "any other Person", AT&T's liability should be appropriately limited. The word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person".

CONCLUSIONS

The Commission concludes that AT&T and Intrado shall include language in the ICA that limits AT&T's liability for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911 that are the result of unintentional or negligent acts by AT&T and/or its agent. The ICA shall also state that AT&T may be liable for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911 that are the result of gross negligence and/or willful misconduct. Finally, the Commission concludes that the word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person".

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

ISSUE NO. 26 – MATRIX ISSUE NO. 25:

(a) Should disputed charges be subject to late payment penalties?

(b) Should the failure to pay charges, either disputed or undisputed, be grounds for the disconnection of services?

(c) Following notification of unpaid amounts, how long should Intrado Comm have to remit payment?

(d) Should the parties be required to make payments using an automated clearinghouse network?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 25. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio. AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff stated that language in the agreement should specify that, for disputed charges put into the escrow account in a timely manner, the only fees owed would be the interest earned through the escrow account that is associated with the disputed charge.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 25 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 25.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

ISSUE NO. 27 – MATRIX ISSUE NO. 29(a): What rounding practices should apply for reciprocal compensation usage and airline mileage?

POSITIONS OF PARTIES

INTRADO: Intrado argued that AT&T's proposed language to round reciprocal compensation up to the next whole minute and to round airline mileage up to the next mile does not represent current industry practice. Intrado proposed that reciprocal compensation usage be billed in six-second increments and that airline mileage be billed in one-fifth mile increments.

AT&T: AT&T asserted that its proposal to round airline mileage to the next mile is consistent with the industry standard practice, and should, therefore, be adopted by the Commission. AT&T further argued that its proposal to round reciprocal compensation up to the next whole minute is consistent with industry practice and should also, therefore, be adopted by the Commission.

PUBLIC STAFF: The Public Staff stated that airline mileage should be rounded to the next whole mile and that rounding for reciprocal compensation usage should be to the next whole minute in cases where actual usage is not available and the billing party relies on jurisdictional reporting factors.

DISCUSSION

Intrado witness Hicks provided the following testimony on this issue; this is the only evidence placed in the record by Intrado on this issue:

> Q. Does AT&T's proposed language reflect industry standard rounding practices?
>
> A. No. Per-minute charges are normally billed in six-second increments. AT&T, however, seeks to round-up charges to the next minute. Similarly, per-mile charges are normally billed in one-fifth mile increments. AT&T seeks to round-up to the next whole mile.

Intrado stated in its Proposed Order that its witnesses stated that industry practice calls for reciprocal compensation usage to be billed in six-second increments and airline mileage to be billed in one-fifth mile increments. Intrado asserted that AT&T's proposed language does not represent current industry practice.

Intrado maintained that AT&T has argued that its language does represent industry practices and that any financial impact to Intrado of such rounding is minimal.

Intrado recommended that the Commission agree with Intrado that many carrier-to-carrier agreements and carrier tariffs utilize six-second increments for per minute charges and one-fifth increments for per mile charges. Intrado noted that AT&T has pointed to no document or standard that supports its proposed rounding methods. Intrado stated that, while AT&T argues that the financial impact to Intrado of such rounding is minimal, Intrado should not be required to pay AT&T more than it otherwise would owe to AT&T.

Intrado recommended that the Commission adopt its proposed language since it represents current industry standards and practices.

AT&T witness Pellerin stated in her rebuttal testimony that she cannot identify the basis for Intrado witness Hicks' conclusions about what is "normal" rounding practices for either reciprocal compensation or airline mileage. Witness Pellerin testified that Intrado's proposed rounding increments are not consistent with AT&T's experience in the industry.

Witness Pellerin noted that the language in dispute regarding mileage rounding is reflected in Pricing Section 2.3 as follows:

> When the calculation results in a fraction of a mile, AT&T will round up to the next **[Intrado:one-fifth (1/5)] [AT&T: whole]** mile before determining mileage and applying rates.

Witness Pellerin stated that the proper increment for rounding distance sensitive rates is one mile, which is standard in the industry for carrier interconnection. Witness Pellerin noted that this is reflected in the Multiple Exchange Carrier Access Billing (MECAB) Guidelines, ATIS-0401004-0009. She noted that Section 3.4 of those Guidelines states:

> 3.4 Transport or Mileage Charge Calculations
>
> The appropriate method for calculation of MPB for the distance sensitive portion of Local Transport (direct-trunk and tandem-switched), Channel Mileage (e.g. Special Transport), is as follows:
>
> 1. The Vertical and Horizontal (V&H) coordinates (filed in NECA Tariff FCC No. 4) are used to calculate the airline distance between two wire centers. Fractional mileage is rounded to the next whole number.

Witness Pellerin noted that, in addition, AT&T's North Carolina switched access tariff provides:

> To determine the rate to be billed, first compute the mileage using the V&H coordinates method for the points involved, then apply the per mile rate shown. If the calculation results in a fraction of a mile, always round up to the next whole mile before determining the mileage and applying the rates. (BellSouth Telecommunications, Inc. Access Services Tariff, Section E6.7.13)

Witness Pellerin noted that AT&T's North Carolina tariff also provides similar language in its section entitled "LATAs and Mileage Measurement Methodology", as follows:

> The resultant number is the airline miles between the wire centers. (Rounded to the next full mile.) (BellSouth Telecommunications, Inc. North Carolina Access Services Tariff, Section 10.4.2)

Witness Pellerin asserted that Intrado's proposed language to round mileage to the next one-fifth mile is inconsistent with industry standard and should be rejected. She maintained that AT&T's mileage rounding increment of one mile should be adopted.

Witness Pellerin testified that the appropriate rounding increment for calculation of conversation time is one minute, not six (6) seconds as Intrado proposes. Witness Pellerin noted that similar language appears in both Pricing Section 2.2 and Intercarrier Compensation Section 14.4[20]:

> For purposes of reciprocal compensation only, measurement of minutes of use over Local Interconnection Trunk Groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection Trunk Group will be totaled for the entire monthly bill and then rounded **[Intrado: based on six (6) second intervals] [AT&T: to the next whole minute].**

Witness Pellerin stated that the parties agree that reciprocal compensation is calculated based on actual conversation seconds, as opposed to including non-conversation time (which is how access usage is calculated). Thus, witness Pellerin maintained, there is no reciprocal compensation charge for calls not completed. She noted that the parties also agree that usage is calculated on a trunk group basis.

Witness Pellerin maintained that the financial impact to Intrado by rounding reciprocal compensation to the next minute is truly *de minimus*. She noted that IC Section 14.4 provides that usage is accumulated on each trunk group for a month, and then rounded up before being billed at the agreed-upon reciprocal compensation rate of $0.0007 per minute. Witness Pellerin stated that, hypothetically, if Intrado had

[20] Witness Pellerin noted that the language dispute reflected in Pricing Section 2.2 and Intercarrier Compensation Section 14.4 is not present with the 9-state template and need not be addressed by the Commission unless it requires use of the 13-state template.

100 trunk groups delivering Section 251(b)(5) usage to AT&T, and all were rounded up by a full minute (which would never happen), that would equate to 7 cents per month for all trunk groups together – or 84 cents per year. She noted that, even if Intrado had 1,000 trunk groups to AT&T, it is still only $8.40 per year. Witness Pellerin asserted that it is not even worth the arithmetic to be more accurate by backing out the fraction of a minute Intrado would pay based on six second rounding.

During cross-examination, witness Pellerin stated that this issue represents one of the fundamental differences between the 9-state template and the 13-state template; in the 9-state region, their switches do not have the capability (or current technology) to do the measurements and billing based on actual usage. She asserted that it would be a huge project to update the switches, update operational systems, and update billing systems to do the measurements and billing based on actual usage.

AT&T stated in its Proposed Order that this issue involves the appropriate rounding practices to apply in two different contexts: (1) airline mileage; and (2) reciprocal compensation.

AT&T noted that the dispute regarding rounding for reciprocal compensation is moot if the 9-state template is used. For airline mileage, AT&T stated that it proposes that mileage should be rounded up to the next whole mile, and Intrado proposes that mileage be rounded up to the next one-fifth of a mile. AT&T maintained that witness Pellerin testified that rounding up to one whole mile is the standard in the industry for carrier interconnection. AT&T asserted that this industry standard for mileage rounding is stated in the MECAB Guidelines, ATIS – 0401004-0009, Section 3.4. AT&T stated that, as an example of this standard practice, witness Pellerin quoted specific portions of AT&T's Switched Access Tariff and Dedicated Access Services Tariff, which incorporate the practice of rounding to the next whole mile.

AT&T stated that, as to rounding for reciprocal compensation, AT&T proposes a rounding increment of one minute, while Intrado proposes rounding in six second intervals. AT&T argued that, once again, AT&T made a proposal that tracks the standard industry practice for carrier billing, while Intrado has proposed an approach that deviates from this standard practice. AT&T noted that witness Pellerin also testified that AT&T's proposed rounding of reciprocal compensation usage to the next whole minute is utilized between other carriers.

AT&T asserted that, rather than accepting the standard industry practice, Intrado has proposed a much shorter rounding increment. AT&T argued that the difference, however, between the standard increment proposed by AT&T and the interval proposed by Intrado represents a financial impact that is minimal. AT&T noted that, to illustrate this point, witness Pellerin testified as to the hypothetical example in which Intrado would have 100 trunk groups dedicated to Section 251(b)(5) usage, and all were rounded up by a full minute, rather than the six seconds proposed by Intrado. AT&T maintained that, not counting any offset for traffic AT&T would terminate to Intrado, the resulting difference would be $.07 per month or 84 cents per year. AT&T stated that, for

1,000 trunk groups, the difference would be $8.40 a year. AT&T noted that, furthermore, AT&T does not currently have the technology that would permit it to measure and bill reciprocal compensation based on actual usage. AT&T asserted that, clearly, Intrado has offered no reasons, financial or otherwise, to deviate from the standard practice. AT&T recommended that the Commission adopt the language proposed by AT&T.

The Public Staff maintained in its Proposed Order that, while both parties contend their position is consistent with the industry standard, the Public Staff believes that AT&T has provided sufficient proof that its rounding factors represent the standard for purposes of carrier interconnection. The Public Staff noted that an additional complication with Intrado's position is that AT&T's switches and billing system are not designed to capture the actual usage. The Public Staff asserted that, thus, AT&T would have to incur the expense of implementing this capability for what appears to be, at most, a *de minimus* difference from AT&T's proposal. Therefore, the Public Staff argued, the Commission should conclude that reciprocal compensation should be rounded up to the next whole minute and that airline mileage should be rounded up to the next whole mile.

After reviewing the evidence of record on this issue, the Commission agrees with AT&T and the Public Staff and finds that it is appropriate to round airline mileage up to the next whole mile and round reciprocal compensation up to the next whole minute. As the record reflects, both Intrado and AT&T maintain that their rounding proposals are standard industry practice. However, AT&T has provided convincing evidence that its method constitutes standard industry practice, and the record shows that any financial harm suffered by Intrado as a result of AT&T's rounding proposal would truly be *de minimus*. In addition, AT&T has asserted that its current systems do not capture actual usage and that updates would need to be completed in order for AT&T to round as proposed by Intrado in this proceeding. Therefore, the Commission concludes that reciprocal compensation should be rounded up to the next whole minute and that airline mileage should be rounded up to the next whole mile.

CONCLUSIONS

The Commission concludes that reciprocal compensation should be rounded up to the next whole minute and that airline mileage should be rounded up to the next whole mile.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

ISSUE NO. 28 – MATRIX ISSUE NO. 29(b): Is AT&T permitted to impose unspecified non-recurring charges on Intrado Comm?

POSITIONS OF PARTIES

INTRADO: Intrado argued that AT&T should be required to notify Intrado of any charges prior to provisioning a service. Intrado maintained that any charges to be imposed on Intrado should be developed pursuant to the Section 251 and Section 252 process.

AT&T: AT&T asserted that services ordered and provided by AT&T that are not included in the interconnection agreement and for which there is no tariffed rate should be priced based on AT&T's standard generic contract rate.

PUBLIC STAFF: The Public Staff stated that the language proposed by AT&T is adequate to ensure that AT&T is paid for the services and products it provides to Intrado and that Intrado is not charged an unreasonable or discriminatory rate for receiving those services.

DISCUSSION

Intrado witness Hicks stated in his direct testimony that AT&T should be required to identify which and when services, functions, or facilities are subject to extraordinary charges, and notify Intrado if such charges will be applied. Witness Hicks noted that Intrado understands that some items must be individually billed as non-recurring charges depending on the specific request made by Intrado. Witness Hicks maintained that both parties, however, must identify any services to which such charges may apply and how those charges will be calculated.

Intrado stated in its Proposed Order that it opposes AT&T's ability to arbitrarily develop rates, post those rates on AT&T's website, and then impose those rates on Intrado without notice. Intrado argued that any rates developed by AT&T should be pursuant to the process established by Section 251 and Section 252 and subject to approval by the Commission.

Intrado noted that AT&T has claimed that it must be able to develop rates to ensure Intrado pays for services that might have been rendered for which no current rate exists. Intrado maintained that, in AT&T's view, AT&T's standard generic contract rate should be applied in these instances. Intrado asserted that the process that AT&T proposed to use to develop and impose those rates is arbitrary.

Intrado recommended that the Commission conclude that any rates to be imposed on it under the interconnection agreement should be developed through the Section 251 and Section 252 process with approval by the Commission. Intrado

asserted that imposing some parameters on AT&T's ability to impose rates on Intrado is reasonable.

AT&T witness Pellerin stated in her rebuttal testimony that, in Pricing Section 1.9, the parties have agreed that AT&T's obligation to provide products and services to Intrado is limited to those for which rates, terms, and conditions are contained in the interconnection agreement. She noted that the parties also agreed in Section 1.9 that, to the extent Intrado ordered a product or service not contained in the interconnection agreement, AT&T would reject that order. Witness Pellerin stated that if the order was for a UNE, Intrado could submit a Bona Fide Request in accordance with Appendix UNE's Bona Fide Request provisions. She stated that if the order was for a product or service still available in AT&T's tariff, Intrado could seek to amend the interconnection agreement to incorporate relevant rates, terms, and conditions.

Witness Pellerin noted that Pricing Sections 1.9.1 and 1.9.2 address what happens if Intrado orders a product or service not contained in the interconnection agreement and AT&T inadvertently provisions it nonetheless. Witness Pellerin stated that the language in Sections 1.9.1 and 1.9.2 is as follows[21]:

> 1.9.1 CLEC [competitive local exchange company] shall pay for the Product or Service provisioned to CLEC at the rates set forth in AT&T's applicable intrastate tariff(s) for the Product or Service or, to the extent there are no tariff rates, terms or conditions available for the Product or Service in the applicable state, then ~~AT&T shall propose rates pursuant to the process required in Sections 251 and 252 of the Act.~~ **CLEC shall pay for the Product or Service at AT&T's current generic contract rate for the Product or Service set forth in AT&T's applicable state-specific generic pricing schedule as published on AT&T's CLEC website; or**
>
> **1.9.2 CLEC will be billed and shall pay for the product or service as provided in Section 1.9.1, above, and AT&T may, without further obligation, reject future orders and further provisioning of the product or service until such time as applicable rates, terms and conditions are incorporated into this Agreement as set forth in this Section 1.9.**

Witness Pellerin noted that AT&T's proposed language in Section 1.9 provides that Intrado will pay the standard generic rate that another CLP would pay for that same product or service (provided there is no tariff rate). She stated that Intrado's language requiring AT&T to propose rates pursuant to the Act should be rejected. Witness Pellerin argued that it is important to keep in mind that, in this example, Intrado has ordered, and AT&T has inadvertently provisioned, a product or service that is available to other CLPs in their interconnection agreements, but is not in Intrado's interconnection

[21] The language stricken through represents language proposed by Intrado and the language in bold and underlined represents language proposed by AT&T.

agreement. Witness Pellerin asserted that AT&T should not have to go through the process of proposing rates when it already has rates established. She stated that, moreover, Intrado has objected to AT&T's language in Section 1.9.2 that would require Intrado to actually pay for these services.

Witness Pellerin stated that AT&T's proposed language in Section 1.9.2 also provides that AT&T may reject other orders for the same product or service until rates, terms, and conditions are incorporated into the interconnection agreement. She argued that AT&T should not be expected or required to continue providing service outside the interconnection agreement simply because it inadvertently did so once.

Witness Pellerin maintained that AT&T's language is entirely appropriate when you consider that Intrado has ordered (and received the benefit of) a product or service for which it has no contract terms, but that AT&T inadvertently provisioned anyway.

Witness Pellerin further noted that AT&T objects to Intrado's proposed language in Pricing Section 1.10.1. She noted that Section 1.10.1 addresses any rates in the Pricing Schedule that are "TBD" (to be determined). She stated that the parties have agreed to most of the language regarding TBD rates, including retroactive application of generic prices "without the need for any additional modification(s) to this Agreement or further Commission action." She noted that Intrado then adds this conflicting language: "if the parties have reached mutual agreement of the specified rate and the Commission has approved pursuant to the following process." Witness Pellerin maintained that this language would require that (1) Intrado agrees to the prices, and (2) the Commission approves them. She argued that this language would improperly permit Intrado to object to prices even if the Commission had approved them. Witness Pellerin proposed that the Commission reject Intrado's proposed language in this regard.

During cross-examination, witness Pellerin explained that the parties have agreed that if there is a tariffed rate for a particular service, then that rate will be used. She stated that if, however, there is not a tariffed rate but there is a rate in AT&T's generic interconnection agreement that AT&T offers to other CLPs in North Carolina, then AT&T proposes that that rate would be applied to Intrado. Witness Pellerin noted that Intrado is proposing that AT&T come up with some other rate that AT&T proposes and the parties mutually agree on. She stated that AT&T believes that to be an unnecessary step given that AT&T has already developed a rate that it uses for other CLPs. Witness Pellerin explained that Intrado's proposed language ("AT&T shall propose rates pursuant to the process required by Sections 251 and 252") assumes that all of the prices in the pricing appendix are limited to unbundled network elements and interconnection. She stated that the pricing section applies to the entire agreement so there may very well be services included in the generic agreement that are not necessarily TELRIC prices.

AT&T stated in its Proposed Order that this issue involves two provisions of the ICA, Pricing Section 1.9.1 and Section 1.9.2, which relate to the same dispute. AT&T noted that, specifically, the parties have agreed in Section 1.9 (Pricing) that AT&T is

obligated only to provide products and services to Intrado for which there are rates, terms, and conditions in the ICA. AT&T maintained that Section 1.9.1 and Section 1.9.2 address the procedure to follow if Intrado orders a product that is not included in the ICA, and AT&T inadvertently provides the product or service (even though it is under no obligation to do so). AT&T noted that the parties have already agreed in Pricing Section 1.9.1 that, in these circumstances, Intrado will pay the tariffed rate if a tariff exists. AT&T stated that it further proposes that, if no tariff exists, the standard generic rate that any other CLP would pay for the same product or service would apply to Intrado.

AT&T maintained that Intrado, on the other hand, proposes that, under these circumstances, AT&T should be required to develop charges through the Section 252 process with approval by the Commission. AT&T stated that, thus, in the unlikely event that AT&T inadvertently provides services that are outside of the scope of the Agreement, it would have to propose and negotiate (and perhaps arbitrate) a rate for services that have already been rendered and for which generic CLP prices already exist. AT&T argued that this circumstance should occur rarely, if ever. AT&T maintained that, if it does occur, this occurrence would almost certainly be under circumstances that constitute a mutual mistake, i.e., a mistake by Intrado in ordering outside of the interconnection agreement, and a mistake by AT&T in providing the service in spite of its being improperly ordered. AT&T stated that, in these limited circumstances, AT&T should be allowed to charge Intrado the going rate for the service it has ordered (outside of the interconnection agreement), without the prospect of protracted price negotiations or arbitration. AT&T proposed that the Commission approve the language proposed by AT&T.

AT&T noted that it proposed Section 1.9.2 as a companion to Section 1.9.1. AT&T stated that this section would provide that, under the circumstances identified in Section 1.9.1, Intrado would be billed for, and would be required to pay for, the product or service. AT&T maintained that its proposed language would also state that AT&T's one-time provision of a service that is not within the scope of the interconnection agreement would not bind AT&T to provide the service in the future and that these provisions would only arise when Intrado ordered something that is outside of the interconnection agreement (and AT&T inadvertently provides the product, even though it is under no obligation to do so). AT&T asserted that, under these circumstances, it only makes sense that Intrado should be required to pay for what it has ordered, and AT&T should have no obligation to provide the product again unless the interconnection agreement is amended to include associated rates, terms, and conditions. AT&T argued that Section 1.9.2 simply creates a mechanism to achieve this reasonable objective and proposed that the Commission adopt AT&T's language in this regard.

The Public Staff stated in its Proposed Order that the language proposed by AT&T for this issue would require Intrado to pay the standard generic rate that another CLP would pay for the same product or service, assuming there is no rate in AT&T's tariff. The Public Staff noted that Intrado's proposed language would require AT&T to propose a rate for Intrado's acceptance, even though this rate may be already

contained in an effective ICA for another CLP. The Public Staff maintained that, additionally, Intrado has objected to language that would require Intrado to pay for these improperly ordered services at all.

The Public Staff recommended that the Commission find that the language proposed by AT&T is adequate to ensure that AT&T is paid for the services and products it provides to Intrado and that Intrado is not charged an unreasonable or discriminatory rate for receiving those services. The Public Staff stated that, as noted by AT&T, this provision will come into play only if Intrado orders a product or service not offered in the ICA and it is inadvertently provided by AT&T.

This issue centers around language disputes for the Appendix Pricing, Sections 1.9.1 and 1.9.2, as follows:

Intrado's proposed language

Section 1.9.1: CLEC shall pay for the Product or Service provisioned to CLEC at the rates set forth in AT&T's applicable intrastate tariff(s) for the Product or Service or, to the extent there are no tariff rates, terms or conditions available for the Product or Service in the applicable state, then AT&T shall propose rates pursuant to the process required in Sections 251 and 252 of the Act.

Section 1.9.2: AT&T's provisioning of orders for such Products or Services is expressly subject to this Section 1.9 and in no way constitutes a waiver of AT&T's right to charge and collect payment for such Products and/or Services.

AT&T's proposed language

Section 1.9.1: CLEC shall pay for the Product or Service provisioned to CLEC at the rates set forth in AT&T's applicable intrastate tariff(s) for the Product or Service or, to the extent there are no tariff rates, terms or conditions available for the Product or Service in the applicable state, then CLEC shall pay for the Product or Service at AT&T's current generic contract rate for the Product or Service set forth in AT&T's applicable state-specific generic pricing schedule as published on AT&T's CLEC website; or

Section 1.9.2: CLEC will be billed and shall pay for the product or service as provided in Section 1.9.1, above, and AT&T may, without further obligation, reject future orders and further provisioning of the product or service until such time as applicable rates, terms and conditions are incorporated into this Agreement as set forth in this Section 1.9.

After reviewing the record of evidence on this issue, the Commission agrees with AT&T and the Public Staff that AT&T's proposed language is appropriate. As noted by both AT&T and the Public Staff, the issue in dispute here does not come into play unless Intrado, presumably inadvertently, or in error, orders a product or service which it is not entitled to receive under the express terms of the ICA and AT&T, inadvertently, or in error, provides the product or service. Based on AT&T's proposed language, under such a circumstance, Intrado would be billed at: (1) the rates set forth in AT&T's applicable intrastate tariff(s) **or**; (2) to the extent there are no tariffed rates, then Intrado will pay AT&T's current generic contract rate as set forth in AT&T's applicable state-specific generic pricing schedule as published on AT&T's CLEC website. Under AT&T's proposed Section 1.9.2, AT&T may then reject future orders until such time as appropriate rates for such services are incorporated into the Intrado/AT&T interconnection agreement. The Commission agrees with AT&T that it is inappropriate and unnecessary to require AT&T to propose some other rate that the parties mutually agree on when AT&T has already got a rate that it uses for other CLPs. The Commission concludes that AT&T's proposed language is appropriate and reasonable and, therefore, should be adopted for inclusion in the parties' interconnection agreement.

CONCLUSIONS

The Commission concludes that AT&T's proposed language for Appendix Pricing Section 1.9.1 and Section 1.9.2 is appropriate and should be adopted for inclusion in the parties' interconnection agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

ISSUE NO. 29 – MATRIX ISSUE NO. 33: Should AT&T be required to provide UNEs to Intrado Comm at parity with what it provides to itself?

POSITIONS OF PARTIES

INTRADO: Intrado argued that the parties should utilize the provisions previously negotiated and agreed-upon for Ohio. Intrado asserted that AT&T has provided no reason why the provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: AT&T asserted in its cover letter to its Proposed Order that there are 11 issues that arise solely in the context of the 13-state template, and for which there are currently no substantive disputes, including Matrix Issue No. 33. AT&T stated that, for these issues, the parties reached agreement on language to be placed into the 13-state agreement in Ohio, and, accordingly, AT&T believes there is no need for any substantive consideration of these issues by the Commission. AT&T maintained that, if the Commission elects to use the 13-state template, then the language that should be adopted on these issues is the same as that which the parties negotiated in Ohio.

AT&T stated that, for this reason, its Proposed Order does not contain any substantive discussion or ruling on these issues.

PUBLIC STAFF: The Public Staff stated that it is unnecessary to require that the ICA explicitly state that, to the extent technically feasible, the quality of the UNEs and access to such UNEs shall be at least equal to what AT&T provides to itself and to other telecommunications carriers requesting access to the UNEs, because AT&T is already subject to this legal obligation.

DISCUSSION

Based on the record on this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 33 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 33.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

ISSUE NO. 30 – MATRIX ISSUE NO. 34:

(a) How should a "non-standard" collocation request be defined?

(b) Should non-standard collocation requests be priced based on an individual case basis?

POSITIONS OF PARTIES

INTRADO: Intrado argued that, once AT&T provides one carrier with a certain collocation arrangement, it should no longer be considered "non-standard" and subject to varying costs based on AT&T's independent determination.

AT&T: AT&T asserted that a non-standard collocation request is any collocation request that is beyond the terms and conditions set forth in the interconnection agreement. AT&T recommended that the Commission conclude that Intrado is required to pay for the collocation arrangements based on the specific criteria of the request. AT&T recommended that the Commission reject Intrado's proposal to pay the same as other carriers have paid for "similar" work because: (1) the term "similar" is too vague in this context; and (2) older "similar" arrangements may reflect obsolete costs.

PUBLIC STAFF: The Public Staff stated that Intrado's proposed additional language goes beyond the implied intent of Section 2.22 in the Physical Collocation Appendix and should not be adopted.

DISCUSSION

Intrado witness Hicks stated in his direct testimony that AT&T has proposed language that would permit it to charge Intrado for "non-standard" collocation requests made by Intrado. He asserted that AT&T should not be permitted to impose "non-standard" charges on Intrado for arrangements that AT&T has provided to other service providers. Witness Hicks maintained that, once AT&T provides one provider with a certain arrangement, it should no longer be considered "non-standard" and subject to varying costs based on AT&T's independent determination. Witness Hicks stated that it is his understanding that the FCC has found that if a particular method of interconnection is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures and ILECs bear the burden of demonstrating technical infeasibility. Witness Hicks argued that AT&T should not be permitted to impose arbitrary costs on Intrado when AT&T has already provided a similar arrangement to another provider.

Intrado asserted in its Proposed Order that witness Hicks explained that Intrado should be entitled to the same collocation arrangements that AT&T provides to other carriers at the same rates, terms, and conditions. Intrado maintained that once AT&T provides one carrier with a certain arrangement, it should no longer be considered "non-standard" and subject to varying costs based on AT&T's independent determination.

Intrado maintained that AT&T has contended that Intrado should be required to pay for non-standard collocation arrangements based on the specific criteria of the request. Intrado asserted that, in AT&T's view, while another carrier might have what Intrado would characterize as "similar" to what Intrado requests, it may actually be different.

Intrado recommended that the Commission conclude that AT&T should not be permitted to impose "non-standard" charges on Intrado for arrangements that AT&T has provided to other carriers. Intrado maintained that the FCC has found in Paragraph 204 of its *Local Competition Order* that, if a particular method of interconnection or collocation is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures and ILECs bear the burden of demonstrating technical infeasibility. Intrado proposed that the Commission find that AT&T should not be permitted to impose arbitrary costs on Intrado when AT&T has already provided a similar arrangement to another provider.

AT&T witness Pellerin stated in her rebuttal testimony that there is no language in dispute regarding the definition of a "non-standard" collocation request. She stated that, however, the determination of what constitutes a non-standard collocation request is important to the context of the parties' pricing dispute in Matrix Issue No. 34(b).

Witness Pellerin maintained that the parties have agreed in the Physical Collocation Appendix - Section 2.22 that a non-standard collocation request is any collocation request that is beyond the terms, conditions, and rates set forth in Appendix Physical Collocation. She stated that the parties have also agreed to the definition of "Custom Work Charge", as follows:

> Denotes the charge(s) developed solely to meet the construction requirements of the Collocator, (e.g., brighter lighting above the Collocator's cage, circular cage, different style tile within the cage). [Appendix Physical Collocation, Section 2.8]

Witness Pellerin stated that, because custom work such as that described above is provided for by Appendix Physical Collocation, it would be considered a "standard" (rather than "non-standard") collocation request.

Witness Pellerin maintained that Intrado proposed additional language, to which AT&T objects, as set forth in bold italics below:

> Appendix Physical Collocation – Section 2.22 - Non-Standard Collocation Request (NSCR) – AT&T-[STATE] may seek to impose non-standard charges for requirements based on requests from a Collocator that are beyond the terms, conditions, and rates established in this Appendix; ***provided, however, that NSCR charges shall not apply to CLEC requests for collocation or interconnection for which AT&T-(STATE) has existing similar arrangements with other communications service providers. The charges for such similar existing arrangements requested by CLEC shall be in parity with AT&T-(STATE) charges for existing similar arrangements***.

Witness Pellerin argued that Intrado should be required to pay for non-standard collocation arrangements (i.e., beyond the terms and conditions set forth in the interconnection agreement) based on Intrado's specific collocation arrangement. She stated that the term "similar" is sufficiently vague in the context of physical collocation requests as to be fraught with potential for dispute. Witness Pellerin maintained that, while another carrier might have what Intrado would characterize as an arrangement "similar" to what Intrado requests, such arrangement may actually be quite different and may impose on AT&T different provisioning costs. Witness Pellerin asserted that another carrier's collocation arrangement may have been engineered and provisioned for several years prior to Intrado's request, making any associated pricing obsolete and inappropriate for application to Intrado. She stated that, if Intrado objects to AT&T's NSCR charges because it believes them to be discriminatory, it may invoke dispute resolution pursuant to the interconnection agreement. Witness Pellerin argued that individual case basis pricing is appropriate for any non-standard collocation arrangement; therefore, Intrado's proposed language should be rejected.

AT&T asserted in its Proposed Order that the parties are fundamentally in agreement as to the definition of a "non-standard" collocation request. AT&T noted that, specifically, they have agreed to language in Section 2.22 of the Physical Collocation Appendix that a "non-standard collocation is any collocation request that is beyond the terms, conditions, and rates set forth in Appendix Physical Collocation." AT&T stated that the parties also seem to be in general agreement that pricing for non-standard collocation should be determined on a case-by-case basis. AT&T maintained that, thus, the only real dispute is language that Intrado seeks to include in the Appendix to limit the parameters of this individual-case-basis pricing.

AT&T asserted that Intrado's proposed language would restrict AT&T to charging Intrado for requested physical collocation arrangements at the same rate as it charged other carriers that have obtained "similar" arrangements at any point in the past.

AT&T argued that the difficulty with Intrado's proposal is that a particular request by Intrado would or would not cost the same as an arrangement previously provided to another carrier based on an assessment of whether the two requests are "similar". AT&T noted that, thus, as its witness Pellerin testified, "while another carrier might have what Intrado characterizes as an arrangement 'similar' to what Intrado requests, such arrangement may actually be quite different and may impose on AT&T different provisioning costs." AT&T stated that, further, as witness Pellerin noted, "another carrier's collocation arrangement may have been engineered and provisioned several years prior to Intrado's request, making any associated pricing obsolete and inappropriate for application to Intrado."

AT&T maintained that, accordingly, the adoption of Intrado's limitation that the pricing must be the same as "similar" past requests will do little or nothing to provide a useful pricing guide and will instead create the likelihood of future disputes as to what does or does not constitute a "similar" request. AT&T argued that the better approach would be for AT&T to price non-standard collocation requests by Intrado based on the specific request, and the specific circumstances that pertain at the time of the request. AT&T asserted that, if Intrado objects to the charges AT&T proposes, then it always has the option of invoking dispute resolution pursuant to the interconnection agreement. AT&T recommended that the Commission adopt AT&T's proposed language.

The Public Staff stated in its Proposed Order that Intrado witness Hicks, when asked on cross-examination by the Public Staff what would justify a non-standard collocation request, opined that AT&T wanted to be protected from anything out of the ordinary requested by a CLP. The Public Staff noted that, while he understood AT&T's position, he argued that Intrado also wants to be treated fairly, and if AT&T has previously provided a similar collocation arrangement, then the pricing should be equivalent.

The Public Staff maintained that, if AT&T deployed equipment, witness Hicks stated that AT&T and Intrado should jointly make a determination of the appropriate charges, taking into account whether a similar deployment had been performed

previously. The Public Staff asserted that, otherwise, Intrado would have to merely presume that AT&T was charging Intrado fairly. The Public Staff stated that, if Intrado subsequently learned that another collocator had installed similar equipment at a much lower rate than that offered to Intrado, Intrado would consider taking corrective action under the provisions of the ICA.

The Public Staff noted that witness Hicks contended that AT&T should not be permitted to impose arbitrary, "non-standard" charges on Intrado for arrangements AT&T has provided previously to other service providers. The Public Staff maintained that, for example, if AT&T has developed pricing for work for another collocator, then Intrado should be subject to that same pricing rather than special, higher pricing. The Public Staff stated that witness Hicks contended that arrangements should no longer be considered non-standard and subject to varying costs based on AT&T's independent determination. The Public Staff noted that witness Hicks also stated that the FCC has found that if a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures.

The Public Staff stated that it agrees with AT&T that a non-standard collocation request is any collocation request beyond the terms and conditions set forth in the ICA. The Public Staff further stated that it agrees that Intrado should be required to pay for non-standard collocation arrangements based on the specific criteria of the request (i.e., on an individual case basis). The Public Staff asserted that, while Intrado might characterize another collocator's arrangement as "similar" to what Intrado requests, it may actually be very different. The Public Staff maintained that, for example, these "similar" collocation arrangements may have been engineered and provisioned several years ago, making any associated costs obsolete. The Public Staff asserted that individual case basis pricing is appropriate for any non-standard collocation arrangement. The Public Staff maintained that, if Intrado objects to AT&T's NSCR charges as discriminatory, it may seek dispute resolution pursuant to the ICA.

The Public Staff recommended that the Commission find that using the 13-state template without the proposed additional language provided by Intrado in Section 2.22 of the Physical Collocation Appendix is appropriate.

In this issue, Intrado proposes to include the following language shown in bold and underlined in Section 2.22 of the Physical Collocation Appendix:

> 2.22 Non-Standard Collocation Request (NSCR) – AT&T-[STATE] may seek to impose non-standard charges for requirements based on requests from a Collocator that are beyond the terms, conditions, and rates established in this Appendix**; provided, however, that NSCR charges shall not apply to CLEC requests for collocation or interconnection for which AT&T-[STATE] has existing similar arrangements with other communications service providers. The charges for such**

similar existing arrangements requested by CLEC shall be in parity with AT&T-[STATE] charges for existing similar arrangements.

The Commission agrees with AT&T and the Public Staff that Intrado's proposed language is not appropriate. The phrase "existing similar arrangements" is much too subjective, and, as noted by AT&T, would, instead, create the likelihood of future disputes as to what does or does not constitute a "similar" request. Non-standard collocation requests should be priced based on an individual case basis and the language from the 13-state template without the additional language proposed by Intrado would achieve this result. In addition, as noted by both AT&T and the Public Staff, if Intrado is aggrieved by a particular individually-priced non-standard collocation request, it can invoke the dispute resolution provision in the interconnection agreement. Therefore, the Commission finds it appropriate to exclude the language proposed by Intrado and, instead, adopt the exact language from the 13-state template for Section 2.22 in the Physical Collocation Appendix.

CONCLUSIONS

The Commission concludes that it is appropriate to use the language in Section 2.22 of the Physical Collocation Appendix from the 13-state template without the additional language proposed by Intrado.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

ISSUE NO. 31 - MATRIX ISSUE NO. 35: Should the Parties' interconnection agreement reference applicable law rather than incorporate certain appendices which include specific terms and conditions for all services?

POSITIONS OF PARTIES

INTRADO: Intrado explained that, in connection with their Ohio negotiations, the Parties had agreed that certain appendices should be included in the ICA rather than indicating that the services governed by those appendices would be provided pursuant to applicable law. Thus, the Parties agreed to incorporate certain appendices into the Ohio ICA governing such services as local number portability, rights-of-way, numbers, directory assistance, and the like. Intrado wants the same provision as in Ohio to be included in the North Carolina ICA.

AT&T: In its Cover Letter to its Proposed Order, AT&T maintained that Matrix Issue No. 35 was an issue that arises solely in the context of the 13-state template. For this issue, AT&T represented that the Parties had reached agreement on the language to be placed into the 13-state agreement in Ohio and, accordingly, AT&T does not believe there is a need for any substantive consideration of this issue by the Commission.

PUBLIC STAFF: Any attachments should be incorporated into the ICA rather than incorporated by reference.

DISCUSSION

Based on the record in this matter, the Commission finds that the parties have mutually agreed to use the language for Matrix Issue No. 35 that the parties negotiated in Ohio for insertion into their North Carolina interconnection agreement.

CONCLUSIONS

The Commission concludes that this issue has been resolved and that the parties have agreed to use the language negotiated in Ohio concerning Matrix Issue No. 35.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

ISSUE NO. 32 – MATRIX ISSUE NO. 36: Should the terms defined in the ICA be used consistently throughout the agreement?

POSITIONS OF PARTIES

INTRADO: The ICA defines certain terms, but AT&T's language does not consistently capitalize those terms throughout the agreement. To the extent a term has been defined, it should be capitalized throughout the agreement in recognition that it is a specifically defined term.

AT&T: AT&T asserted that defined terms should be appropriately capitalized throughout the ICA based on the use of the terms.

PUBLIC STAFF: If a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition.

DISCUSSION

This issue was addressed by Intrado witness Clugy in her direct testimony and AT&T witness Pellerin in her rebuttal testimony.

Witness Clugy testified that the ICA defines certain terms, but AT&T has not consistently capitalized those defined terms throughout the ICA. She recommended that, if a term has been defined, it should be capitalized throughout the ICA. AT&T witness Pellerin agreed that defined terms should be capitalized throughout the ICA, but only when the defined terms are used in a manner consistent with their definition. She proposed that, if the parties have a disagreement as to whether a particular word should be capitalized, they should seek the Commission's assistance.

In its Proposed Order, the Public Staff stated that, if a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition.

It appears that the parties may not actually disagree as to whether a previously defined term should be capitalized when used in a manner consistent with its definition, but disagree as to whether terms such as "end user" are being used consistently with their definition and therefore should be capitalized. However, no specific instances of disagreement have been brought before the Commission. The Commission finds that, if a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition. Any further disputes over capitalization, definitions, or the proper language for inclusion in the ICA may be brought to the Commission.

CONCLUSIONS

The Commission concludes that if a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition. Any further disputes over capitalization, definitions, or the proper language for inclusion in the ICA may be brought to the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That Intrado and AT&T shall prepare and file a Composite Agreement in conformity with the conclusions of this *Order* no later than Monday, June 8, 2009. Such Composite Agreement shall be in the form specified in paragraph 4 of Appendix A in the Commission's August 19, 1996 *Order* in Docket Nos. P-140, Sub 50, and P-100, Sub 133, concerning arbitration procedure (*Arbitration Procedure Order*), as amended by the Commission's *Order Modifying Composite Agreement Filing Requirements* dated November 3, 2000.

2. That, not later than Tuesday, May 26, 2009, a party to the arbitration may file objections to this *Order* consistent with paragraph 3 of the *Arbitration Procedure Order*.

3. That, not later than Tuesday, May 26, 2009, any interested person not a party to this proceeding may file comments concerning this *Order* consistent with paragraphs 5 and 6, as applicable, of the *Arbitration Procedure Order*.

4. That, with respect to objections or comments filed pursuant to decretal paragraphs 2 or 3 above, the party or interested person shall provide with its objections or comments an executive summary of no greater than one and one-half pages single-spaced or three pages double-spaced containing a clear and concise statement of all material objections or comments. The Commission will not consider the objections or comments of any party or person who has not submitted such executive summary or whose executive summary is not in substantial compliance with the requirements above.

5. That parties or interested persons submitting Composite Agreements, objections, or comments shall also file those Composite Agreements, objections, or comments, including the executive summary required in decretal paragraph 4 above, on

an MS-DOS formatted 3.5-inch computer diskette containing noncompressed files created or saved in Microsoft Word.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of April, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

Commissioner Culpepper separately concurs with the Majority's decisions in Findings of Fact Nos. 8, 9, 10, and 11.

bp042309.01

Appendix A

Sprint/Randolph Arbitration Proceeding
Docket No. P-1187, Sub 2

Act	Telecommunications Act of 1996
ALI	Automatic Location Identification
ANI	Automatic Number Identification
ASR	Access Service Request
AT&T	BellSouth Telecommunications, Inc., d/b/a AT&T North Carolina
ATIS	Alliance for Telecommunications Industry Solutions
CLEC	Competitive Local Exchange Company
CLP	Competing Local Provider
CMRS	Commercial Mobile Radio Service (wireless)
Commission	North Carolina Utilities Commission
EAS	Extended Area Service
FCC	Federal Communications Commission
GTC	General Terms and Conditions
ICA	Interconnection Agreement
ILEC	Incumbent Local Exchange Company
Intrado	Intrado Communications Inc.
IP	Internet Protocol
LATA	Local Access and Transport Area
MSAG	Master Street Address Guide
MECAB	Multiple Exchange Carrier Access Billing
NENA	National Emergency Number Association
OSS	Operational Support Systems
POI	Point of Interconnection
PSAP	Public Safety Answering Point
PSTN	Public Switched Telephone Network
Public Staff	Public Staff – North Carolina Utilities Commission
RAO	Recommended Arbitration Order
SR	Selective Router
TELRIC	Total Element Long Run Incremental Cost
UNE	Unbundled Network Element
VoIP	Voice over Internet Protocol

Commissioner William T. Culpepper, III, concurring:

While I fully concur with the Commission's Findings of Fact Nos. 8, 9, 10 and 11 and the large majority of the discussion explaining the rationale therefor, I write separately to reiterate and further expound on that which I stated in my concurring opinion in *In re the Petition of Ellerbe Telephone Co. et al for Arbitration with Alltel Communications et al,* Docket Nos. P-21, Sub 71 et al, *Order Ruling on Objections and Requiring the Filing of Composite Agreements* (*Objections to RAO*).

The Commission correctly notes herein that:

(1) When a non-ILEC telecommunications carrier, such as a CLP or a CMRS Provider, requests interconnection with an ILEC, the ILEC's obligation is prescribed by Section 251(c)(2) of the Act which gives the CLP/CMRS Provider the option to choose a single technically feasible location within the ILEC's network upon which to interconnect, with the parties being bound by that choice unless they voluntarily agree to do otherwise[1];

(2) Under the auspices of Section 252(a) of the Act, when a requesting CLP seeks interconnection with an ILEC, the parties may agree to establish a single POI or multiple POIs, at any location or number of locations, without regard to the requirements of Section 251(c); and

(3) When an ILEC requests interconnection with a CLP or any other carrier, the interconnection is pursuant to Section 251(a) of the Act and, again, the parties **may agree** to establish a single POI or multiple POIs at any location or number of locations (emphasis supplied).

However with respect to the third principal above cited (Section 251(a)), this RAO goes on to say:

> If, however, the parties cannot agree voluntarily upon either the location or number of POI, the Commission *may*, in its discretion, determine both the number and location(s) of the POI.[2]

This conclusion is based on the following dictum contained in the *Objections to RAO* majority opinion:

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[1] As noted in footnote 14 on page 41 of this RAO, the FCC has interpreted Section 251(c)(2) to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA.

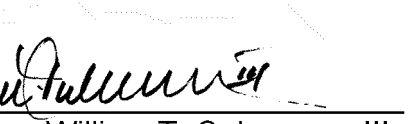
[2] Page 41

> Unlike the language of Section 251(c)(2), Section 251(a)(1) does not specify the number of POIs or where the POI or POIs should be located. As a result, the literal language of Section 251(a)(1), in an arbitration in which an RLEC seeks interconnection with a CMRS Provider, would seem to provide the Commission with the discretion to determine how many POIs there should be and where they should be located.[3]

I do not subscribe to or agree with the foregoing dictum insofar as it suggests that the Commission has the discretion, under Section 251(a), to **require** more than a single point of interconnection. This is in keeping with my concurring opinion in the *Objections to RAO*, in which I stated:

> In other words, it is my belief that in all instances there is required to be but a single POI between two interconnecting telecommunications carriers and, in the event they are unable to agree as to its location, then that issue is one to be properly decided by the Commission based upon facts and equities presented to it, and the law applicable thereto, in the course of a Section 252 arbitration proceeding.[4]

Put another way I do not believe that the obligations of a CLP or other carrier to a requesting ILEC under Section 251(a)(1) are greater than the obligations of an ILEC to a requesting non-ILEC under Section 251(c)(2) with respect to the number of **required** POI (i.e. a single POI).



Commissioner William T. Culpepper, III

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[3] *Objections to RAO*, p.11

[4] *Objections to RAO*, Culpepper concurring opinion, p.1.

Attachment 2

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-1187, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of Intrado Communications Inc. for	)	ORDER RULING ON
Arbitration Pursuant to Section 252(b) of the	)	OBJECTIONS AND
Communications Act of 1934, as Amended, with	)	REQUIRING THE FILING
BellSouth Telecommunications, Inc. d/b/a	)	OF A COMPOSITE
AT&T North Carolina	)	AGREEMENT

BEFORE: Commissioner Lorinzo L. Joyner, Presiding, Chairman Edward S. Finley, Jr., and Commissioner William T. Culpepper, III

BY THE COMMISSION: On April 24, 2009, the Commission Panel issued its *Recommended Arbitration Order* (*RAO*) in this docket. The Commission Panel made the following:

FINDINGS OF FACT

1. Intrado seeks to provide competitive 911/E911 service to public safety answering points (PSAPs) and other public safety agencies in North Carolina.

2. The services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. AT&T is also required to offer interconnection as to any other telephone exchange service or exchange access service Intrado may offer.

3. The interconnection agreement (ICA) should contain rates in instances when AT&T is the 911 service provider to the Public Safety Answering Point (PSAP) and when Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 and that part of scenario 3 pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, AT&T should resume negotiations and include any agreement in the composite agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.

4. AT&T's 9-state template is not the appropriate starting point for negotiations. The 13-state template is the appropriate starting point for negotiations for the parties in this proceeding. Based on the recent release of the 22-state template, if the parties agree, they may choose to use the 22-state template instead of the 13-state template

since the 22-state template appears now to be the standard template for the combined BellSouth/SBC legacy regions.

5. The additional language proposed by AT&T in Appendix 911 Section 1.3 and by Intrado in Appendix 911 Section 9.1 should not be adopted. The clarifying language proposed by Intrado in Appendix OET Section 1.4 should be adopted. The language in Appendix ITR Section 4.2 should be adapted to conform to competing local provider (CLP) trunking obligations in the 9-state region.

6. AT&T's proposed primary/secondary routing system should be used to handle 911 traffic in a split wire center. The primary selective router should be determined by which selective router is assigned to the PSAP that serves the majority of access lines in the wire center.

7. The ICA should require Intrado to establish trunking to the appropriate Point of Interconnection (POI) on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

8. AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T.

9. The parties may negotiate and establish multiple POIs, or different POIs for different types of services.

10. AT&T must allow Intrado to interconnect at a technically feasible point on AT&T's network when Intrado seeks to interconnect with AT&T's network as prescribed by Part 51.305 in the Federal Communication Commission (FCC) rules.

11. The Commission will not mandate any language in the ICA regarding meet point, but the parties are free to negotiate meet point locations, if agreed upon.

12. The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other incumbent local exchange companies (ILECs) in North Carolina. In addition, automatic number identification (ANI) and automatic location identification (ALI) information that was initially transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.

13. Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado

proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and AT&T should be required to use Intrado's designated ordering process to obtain services from Intrado.

14. The ICA should include the terms and conditions proposed by AT&T to address separate implementation activities for interconnection arrangements after the execution of the ICA.

15. It is not appropriate to include Intrado's proposed language in Section 3.4.3 of Appendix 911 concerning the interoperability of ALI. Intrado and AT&T can review the other proposals outlined by the Public Staff in its Proposed Order and negotiate changes to Section 3.4 and/or Section 5.4 as they deem appropriate.

16. The ICA should not define a 911/E911-Trunk as a trunk from AT&T's End Office.

17. The parties should modify the definitions of Section 251(b)(5) Traffic, ISP-Bound Traffic, Switched Access Traffic in the General Terms and Conditions (GTC) section and the appendices to comport with current FCC decisions and orders and to be consistent with the Commission's understanding of those decisions and orders. Also, the Appendix Intercarrier Compensation (IC) and Appendix ITR should retain the references to "wireline" and "dialtone" service.

18. Language specifying the actions to be taken to remove misrouted Switched Access traffic is appropriate for inclusion in Section 16.2 of Appendix C of the parties' ICA. Also, the blocking of switched access traffic should not be included in the ICA as an option.

19. The ICA should permit the retroactive application of charges that are not prohibited by an order or other change in law.

20. Matrix Issue No. 18 concerning the term of the ICA and notification for a successor ICA has been resolved and the parties have agreed to use the language negotiated in Ohio concerning this issue.

21. Matrix Issue No. 20 concerning the appropriate terms and conditions regarding billing and invoicing audits has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 20.

22. Matrix Issue No. 22 concerning Intrado's ability to assign the ICA to an affiliated entity has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 22.

23. Matrix Issue No. 23 concerning individual case basis pricing for specific administrative activities has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 23.

24. AT&T may limit its liability for damages caused by unintentional or negligent acts or omissions, but not for liability for willful, wanton, or intentional acts or omissions.

25. The word "customer" should not be substituted for the phrase "End User" when the limitation of liability also covers an expansive definition of "Person".

26. Matrix Issue No. 25 concerning late payments has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 25.

27. Reciprocal compensation should be rounded up to the next whole minute, and airline mileage should be rounded up to the next whole mile.

28. AT&T's proposed language for Appendix Pricing Section 1.9.1 and Section 1.9.2 concerning non-recurring charges is appropriate and should be adopted for inclusion in the interconnection agreement.

29. Matrix Issue No. 33 concerning providing unbundled network elements (UNEs) at parity has been resolved; the parties agree to use the language negotiated in Ohio concerning Matrix Issue No. 33.

30. It is appropriate to use the language in Section 2.22 of the Physical Collocation Appendix concerning non-standard collocation requests from the 13-state template without the additional language proposed by Intrado.

31. Matrix Issue No. 35 concerning references to applicable law has been resolved and the parties have agreed to use the language negotiated in Ohio concerning this issue.

32. If a term is specifically defined in the ICA, it may be capitalized only when it is used in a manner consistent with the definition.

On May 26, 2009, Intrado Communications Inc. (Intrado) and BellSouth Telecommunications, Inc., d/b/a AT&T North Carolina (AT&T) each filed Objections to the *RAO*.

The following table summarizes the Objections to the *RAO*:

Finding of Fact No.	Intrado	AT&T
1		Object
2		Object
3	Object	Object
7	Object	
8	Object	
9	Object	
10	Object	
11	Object	

Finding of Fact No.	Intrado	AT&T
12	Object	
13		Object

AT&T further noted in its Objections that the Commission should "modify the Panel's Recommended Order and remove the portions of its Findings of Fact and Conclusions regarding Issue No. 6 – Finding of Fact No. 5, Issue No. 14 – Finding of Fact No. 13, and Issue No. 16 – Finding of Fact No. 15 that Intrado and AT&T North Carolina have resolved." AT&T stated that it understands that the portion of Issue No. 6 – Finding of Fact No. 5 regarding Intrado's proposed clarifying language for Appendix OET Section 1.1 (incorrectly referred to as "Appendix OET 1.4" in the *RAO*), the portion of Issue No. 14 – Finding of Fact No. 13 regarding Section 6.1 of Appendix ITR regarding trunk forecasting and the portion of Issue No. 16 – Finding of Fact No. 15 regarding Intrado's proposed language for Section 3.4.3 of Appendix 911 have been resolved[1].

On May 28, 2009, the Commission issued an *Order* requesting comments and reply comments on the Objections filed concerning the *RAO.*

Initial comments were filed by AT&T, Intrado, and the Public Staff on Thursday, June 18, 2009. The Public Staff filed corrections to its initial comments on July 9, 2009. Reply comments were filed by AT&T and Intrado on Monday, July 13, 2009.

Following is a discussion, by Finding of Fact, of the outstanding Objections to the *RAO*.

FINDINGS OF FACT NOS. 1 AND 2 (ISSUE NOS. 1 & 2 - MATRIX ISSUE NOS. 1(a) and 1(b)):

ISSUE NO. 1 - MATRIX ISSUE NO. 1(a): What service(s) does Intrado currently provide or intend to provide in North Carolina?

ISSUE NO. 2 - MATRIX ISSUE NO. 1(b): Of the services identified in Issue No. 1(a), which, if any, is AT&T required to offer interconnection under Section 251(c) of the Act?

INITIAL COMMISSION DECISION

The Commission concluded that, with respect to Matrix Issue No. 1(a), Intrado seeks to provide competitive 911/E911 services to PSAPs and other public safety agencies in North Carolina. With respect to Matrix Issue No. 1(b) the Commission concluded that the services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. The Commission further concluded that AT&T is required to offer

[1] The Commission's rulings on these issues in the *RAO* stand, but, as always, parties are free to negotiate resolutions contrary to the Commission's rulings that are acceptable to each party.

interconnection as to any other telephone exchange services or exchange access service Intrado may offer.

MOTIONS FOR RECONSIDERATION

AT&T: AT&T sought reconsideration of Matrix Issue No. 1(b) which concluded that the services that Intrado is seeking to provide are "telephone exchange services" and that, therefore, Intrado is entitled to interconnection with AT&T under Section 251(c) of the Act. AT&T denied that the competitive 911/E911 services Intrado seeks to provide utilizing its Intelligent Emergency Network (IEN) meet any of the relevant criteria set forth in the definition of "telephone exchange service" set forth in 47 U.S.C. 153(47)(A) and (B) as follows:

> The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange access charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

In support of its argument, AT&T included citations to decisions by the Florida and Illinois commissions holding that the IEN services do not meet the above definition. *See In re: Petition by Intrado Communications, Inc. for Arbitration,* Fla. Public Service Comm'n. Docket No. 070736-TPP, Final Order (December 3, 2008) (*Florida Order)*, *rehearing denied* March 16, 2009 and *Intrado, Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934 as amended, to establish an Interconnection Agreement with Illinois Bell Telephone Company,* Ill. Commerce Comm'n, Docket No. 08-0545, Arbitration Order (March 17, 2009) *(Illinois Order).* AT&T also relied heavily on the FCC's order in *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* 15 FCC Rcd 385 (1999) (*Advanced Telecommunications Capability Order or ATCO)* and *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as amended,* 16 FCC Rcd. 2736 (2001) (*DA Call Completion Order).*

Specifically, AT&T denied that Intrado's service provides intercommunication and that, furthermore, it does not provide for origination. It fails to meet the requirement that the service be "within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area," and it also fails to meet the requirement that the service be "of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge." Furthermore, it is not comparable to any service the FCC has held meets the definition of telephone exchange service. With respect to AT&T's own 911 tariff, AT&T denied that it labels its 911 service as a

"telephone exchange service" but rather as a "telephone exchange communication service." In any event, AT&T maintained that this sub-issue is irrelevant.

INITIAL COMMENTS

INTRADO: Intrado maintained that AT&T in its Motion for Reconsideration has relied on the same arguments that it presented in its Initial and Reply Briefs and has again failed to provide any justification for the Commission to depart from its original decision in the *RAO.* Intrado's Reply Comments *per se* were relatively brief and focused, but Intrado also attached a copy of its memorandum before the Ohio PUC which contained Intrado's legal arguments relevant to this issue for the purpose, serving as arguments by reference. [2]

Intrado summarized its points pertinent to this issue as follows: (1) that Intrado's service meets the federal definition of "telephone exchange service" and hence Intrado is entitled to interconnection under Section 251(c); (2) that Intrado's service satisfies each prong of that definition; and (3) that the *RAO's* determination is consistent with the decision by the Ohio PUC.

Intrado's memorandum to the Ohio PUC addressed the instant issue as follows:

With respect to whether Intrado's IEN service constituted a "telephone exchange service," Intrado noted that in 47 U.S.C. 153(47) the FCC had recognized that the definition was not intended as a litmus test to screen out all but the most traditional forms of communications but rather should be construed broadly in light of evolving voice and data technologies in order to aid the pro-competitive purposes of the Act. *See, e.g., ATCO* at Paras. 21 and 31. With respect to the "call origination" part of the definition, Intrado observed that origination is relevant only to Part B of the definition and, in any event, Intrado does provide call origination by enabling two-way communication between the PSAP and the 911 caller or between a PSAP and another PSAP, thus necessarily affording a PSAP the ability to originate and terminate a call.

With respect to "intercommunication," Intrado stated that AT&T was wrong to characterize Intrado's 911 service as only allowing "the PSAP to connect...with designated entities (i.e., emergency personnel)." Rather, the PSAP is purchasing the 911 service from Intrado so it can receive calls from *all* callers programmed to reach the caller's designated PSAP—i.e., so that the PSAP can intercommunicate with those 911 callers. As required by the *DA Call Completion Order*, Intrado's 911 service interconnects all 911 callers in a specific geographic area to the PSAP responsible for receiving those 911 calls. Intercommunication may also take the form of

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[2] The Ohio PUC found in Intrado's favor in Ohio Case No. 07-119-TP-ACE, *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio,* Finding and Order (Ohio P.U.C., February 5, 2008) Ohio reinforced its conclusions that Intrado's proposed service qualified as telephone exchange service under both 47 U.S.C. (47)(A) and (B) in its arbitration award in Case No. 07-1280-TP-ARB (issued March 4, 2009) (*Ohio Arbitration Award).*

PSAP-to-PSAP communications. Furthermore, the concepts of "geographical areas" and "community of interconnected customers" ties into the origination and conferencing abilities provided by Intrado.

With respect to the requirement that Intrado's service must be "within a telephone exchange, or within a connected system of the telephone exchanges within the same exchange area", Intrado noted that AT&T had conceded that Intrado's 911/E911 service area does not necessarily have to match that of the ILEC's. With Intrado's service, all 911 callers, whether fixed or nomadic within the PSAP community of interest, can be connected to the designated PSAP, together with PSAP-to-PSAP connection capability in the event of misdirected calls. The FCC has conclusively determined that the telephone exchange service definition "does not require a specific geographic boundary." *See Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana,* 13 FCC Rcd. 20599, Para. 30 (1998).

With respect to whether Intrado's service is "of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge," Intrado argued that its service to PSAPs is analogous to exchange access service and is therefore entitled to Section 251(c) interconnection on that basis as well. The Commission correctly found that Intrado's service meets the "exchange service charge" requirement which is met by the PSAP service fee. AT&T's argument that this charge is "not enough" is in fact the exact opposite of the truth. *See ATCO,* Para. 27.

PUBLIC STAFF: The Public Staff stated its belief that the Commission had thoroughly considered the arguments presented by the parties and had arrived at well-reasoned conclusions on these issues in the *RAO.* This is a case of first impression in North Carolina, and the Commission correctly applied the relevant federal law. AT&T has adduced no new argument to shed any new, much less convincing, light on these issues.

The Public Staff added that it would be reasonable to contend that AT&T is estopped from disputing that the service Intrado proposes to provide, a one-way service, is not a "telephone exchange service," when it has already entered into ICAs with one-way paging companies treating one-way traffic as local traffic. The Public Staff also referred to the Intrado arbitration case filed before the Virginia PUC, which has been referred to the FCC. In that case, the Wireline Competition Bureau of the FCC has sought comments from parties on the "general policy issue of the competitive provision of 911 voice services" in consolidated arbitration proceedings between Intrado Communications of Virginia and Central Telephone Company of Virginia and Verizon South, Inc. and Verizon Virginia, Inc. in WC Docket Nos. 08-33 and 08-185. The request for comments concerns the specific issues of how competition in provisioning the 911 network might impact the PSAPs and other public safety services in Virginia. Thus, in this request for comments the Wireline Competition Bureau is seeking comments on the "general policy issue of the competitive provision of 911 voice

services"; it is *not* seeking comments specifically on the legal question of Intrado's right to interconnect subject to Section 251(c) of the Act.[3]

REPLY COMMENTS

AT&T: Responding to the Public Staff's and Intrado's comments, AT&T reiterated its view that Intrado's proposed 911/E911 service does not constitute telephone exchange service and Intrado is thus ineligible for interconnection pursuant to Section 251(c) of the Act. More specifically, AT&T denied the Public Staff's suggestion that it was estopped from disputing Intrado's service because it has entered into ICAs with one-way paging companies. AT&T stated that paging companies were providing telecommunications service, not telephone exchange service, and are thus ineligible to purchase Section 251(c) UNEs. AT&T added that it had entered into the paging agreement solely to fulfill its obligations pursuant to Section 251(b)(5) to enter into reciprocal compensation arrangements with Commercial Mobile Radio Service (CMRS) providers. As for the Virginia arbitration before the Wireline Competition Bureau, AT&T stated that the Public Staff was incorrect in suggesting that Intrado's entitlement to a Section 251(c) agreement is not an issue to be decided in that proceeding.

INTRADO: Intrado filed no Reply Comments on this issue, except to state that "it has already addressed the large majority of AT&T's Initial Comments in its briefs and comments previously filed in this proceeding. AT&T raises nothing new that supports rejection of Intrado Comm's Comment/Objections or adoption of AT&T's Objections."

DISCUSSION

Matrix Issue No. 1(b) is the threshold issue in this arbitration. It poses the question of whether Intrado is entitled to interconnection under Section 251(c) for the 911 and E911 services that it is proposing to competitively provide. The answer to this question depends on whether those services fall under the definition of "telephone exchange services" pursuant to 47 U.S.C. 153(47)(A) or (B). In the *RAO,* the Commission examined at length the text of 47 U.S.C. 153(47), the decisions of other states (with particular reference to the *Ohio Arbitration Award)*, the arguments of the parties, and the relevant FCC cases (notably, *ATCO* and *DA Call Completion Order).* Ultimately, the Commission found for Intrado that the competitive 911/E11 services sought to be offered by Intrado were entitled to interconnection under Section 251(c) with AT&T.

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[3] See Public Notices issued by the Wireline Competition Bureau: (1) "Procedures Established for Arbitration of an Interconnection Agreement Between Intrado Communications of Virginia and Verizon," WC Docket No. 08-185, December 9, 2008, and (2) "Comment Sought on Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings/Pleading Cycle Established," WC Docket No. 08-33 and WC Docket No. 08-185, June 4, 2009 (justifying the unusual step of seeking comment from other parties within the context of an arbitration proceeding). The Bureau wrote in the June 4, 2009, Public Notice: "While Intrado's petitions raise a number of contractual issues specific to Intrado, Embarq, and Verizon, the arbitration proceeding also has raised the more general policy issue of the competitive provision of 911 voice services. Resolution of that issue in the context of this arbitration proceeding could have a significant impact on persons and entities that are not parties to the proceedings...." (at 2).

AT&T has, of course, disputed that Intrado is entitled to such interconnection. In its Objections to the *RAO*, however, AT&T has failed to advance the argument. Instead, AT&T has in large measure merely repeated or, at most, slightly embellished its arguments from its original brief and has offered no new facts or argumentation that would compel the Commission to change its mind. Both Intrado and the Public Staff have provided cogent arguments in reply to AT&T with respect to this issue.

The Commission, of course, recognizes that there is a division of authority among the states as to whether Intrado's competitive 911/E911 services - and, by extension, those of other competitive 911/E911 providers - meet the definition of "telephone exchange services" under 47 U.S.C. 153(47) and hence are qualified for interconnection under Section 251(c) of the Act. The Commission also knows of no definitive pronouncement as yet on the matter from a federal court or the FCC. This simply means that the Commission must reach a decision according to its best judgment. The Commission has been persuaded by the preponderance of the evidence that the better interpretation is that Intrado's competitive 911/E911 services meet the definitions set forth in 47 U.S.C. 153(47) and that the better course of action is to approve an interpretation which more closely conforms to the overall purpose of the Act - that is, one that allows for competition in telecommunications.

CONCLUSIONS

The Commission finds it appropriate to reaffirm its original conclusion that the services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection, as well as for any other telephone exchange service or exchange access service Intrado may offer.

FINDING OF FACT NO. 3 (ISSUE NOS. 3 AND 4 - MATRIX ISSUE NOS. 1(c) and 1 (d)):

ISSUE NO. 3 - MATRIX ISSUE NO. 1(c): Of the services identified in Matrix Issue No. 1(a), for which, if any, should rates appear in the ICA?

ISSUE NO. 4 - MATRIX ISSUE NO. 1(d): For those service identified in Matrix Issue No. 1(c), what are the appropriate rates?

INITIAL COMMISSION DECISION

The Commission concluded that the ICA should contain rates in those respective instances in which AT&T is the 911 service provider to the PSAP and in which Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 [when AT&T is the 911 provider to the PSAP] and that part of Scenario 3 [when Intrado and AT&T each serve a different PSAP and transfer call between each other] pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 [when Intrado is the 911 service provider to the PSAP] and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, the Commission directed

AT&T and Intrado to resume negotiations and include any agreement in the composite agreement. If the parties could not agree, each party was to submit filings to the Commission setting forth why its proposals were more reasonable than the other's.

MOTIONS FOR RECONSIDERATION

AT&T: Assuming for the purposes of argument that Intrado is entitled to interconnection pursuant to Section 251(c) of the Act, the appropriate rates are those proposed by AT&T, which should be applied on a reciprocal basis. In the *RAO,* the Commission indicated that the "rates arising under Section 251(c) must be included in the ICA" but conceded that it was "less clear whether the rates under Section 251(a) must also be included in the ICA." [4] However, the Commission also stated that "since the parties have presented these issues . . ., it would be administratively efficient for the parties to include Section 251(a) rates in the ICA."

AT&T denied that there was any evidence that AT&T had "voluntarily negotiated" what are alleged to be Section 251(a) issues. AT&T stated that its position has always been that Intrado is not entitled to a Section 251(c) ICA, and that it has only been negotiating with Intrado in the context of a commercial agreement, having agreed to disagree about whether Intrado is entitled to a Section 251(c) ICA. In effect, the *RAO* has found that when Intrado, in competing with AT&T, interconnects with AT&T's telephone exchange service, such interconnection is pursuant to Section 251(c); but when AT&T interconnects to Intrado's telephone exchange service, this is under Section 251(a) - but only when the telephone exchange service is to PSAPs. AT&T doubted that Congress in passing the Act intended that different telephone exchange services interconnected between CLECs and ILECs competing in the ILEC's territory should be treated differently.

Moreover, AT&T argued that the *RAO's* reliance on Section 251(a) to decide portions of the above issues was inappropriate and unlawful, because Section 251(a) issues and rates are not subject to Section 252 arbitration. *See* Section 252(b)(4)(A) ("The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any...."). Neither party asked for an interconnection ruling under Section 251(a), and thus a Section 251(a) question did not constitute an "open issue" for the Commission to decide. The limitation of arbitrations to "open issues" presented by the parties is an important limitation because negotiations between the parties are the centerpiece of the Act.

Furthermore, AT&T argued that the *RAO's* invocation of Section 251(a) is unlawful. The only provision that requires ILECs to negotiate ICAs with competitors under Section 251(a) is Section 251(c)(1), and the only negotiation requirement imposed on ILECs under Section 251(c)(1) is the duty to negotiate terms and conditions for the

[4] Section 251(a) reads in pertinent part: "GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.—Each telecommunications carrier has the duty—(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers...."

duties imposed on ILECs under Sections 251(b) and (c). *See Coserv Limited Liability Corp. v. Southwestern Bell Telephone,* 350 F3d 482, 485 (5th Cir. 2003)(*Coserv)* (An ILEC's Section 251(c) duty to negotiate is limited in scope to particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and (c)) Moreover, the FCC has found that only those agreements that contain an ongoing obligation relating to Section 251(b) or (c) must be filed under Section 252(a)(1) of the Act. *See, e.g., In the Matter of Qwest Communications International Inc., Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1),* fn. 26, WC Docket 02-89, 17 FCC Rcd. 19337 (October 4, 2002). AT&T maintained that this FCC decision supports AT&T's position that Section 251(a) issues are not arbitrable, as there is no obligation to file or obtain approval of an agreement that addresses Section 251(a) issues. Even if AT&T were compelled to enter into a Section 251(a) agreement, it would be completely separate from a Section 251(c) ICA. *See, also, Sprint Communications Co., L.P. v. Public Utilities Commission of Texas, 2006 WL 4872346, *5 & n.4 (W.D. Tex. 2006);* Arbitration Award, *Intrado Comms. Inc. and Verizon West Virginia, Inc., Petition for Arbitration filed Pursuant to Section 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5, at 15* (Pub. Serv. Comm'n of W. Va., November 14, 2008) (adopted and affirmed by full West Virginia Commission on December 17, 2008) and *Petition of Level 3 Communications LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996,* 2003 Colo. PUC LEXIS 109, *22-*23 (Colo. Pub. Utils. Comm'n, Jan. 17, 2003). In summary, AT&T maintained that the only way a state commission would have the authority to implement Section 251(a) would be if Congress expressly gave it that authority, since such power cannot be inferred.

INTRADO: Intrado objected to the idea that the Commission might apply AT&T rates to AT&T-to-Intrado traffic. Intrado applauded the *RAO's* recognition that the rates governing AT&T's interconnection to Intrado should be included in the ICA. Intrado also agreed with the *RAO's* decision that "reasonableness" should be the Commission's guide. Furthermore, Intrado believed that the interconnection rates it proposed were reasonable and should be adopted by the Commission. AT&T has not shown that those rates are not reasonable, while the Ohio PUC in Ohio Case No. 08-537-TP-ARB, *Petition of Intrado Communications, Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company,* Arbitration Award at 21 (Oct. 8, 2008) (Ohio Arbitration Award) recently determined that the Intrado proposed rates were "reasonable" and "not beyond the range of other companies."

INITIAL COMMENTS

AT&T: AT&T's initial comments regarding Intrado's objection concerning this issue were in many respects a recapitulation of AT&T's arguments in its Motion for Reconsideration, especially its argument that Sections 251 and 252 contain no language delegating to state commissions the authority to arbitrate and decide Section 251(a) issues. However, if the Commission ultimately decides that Intrado is entitled to a Section 251(c) agreement, then the *RAO's* conclusion that AT&T is required by Section 251(c)(2) and Part 51.305 of the FCC rules to provide

interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible points with AT&T within North Carolina would also include the *mutual* exchange of traffic between the parties' respective customers. *See* 47 C.F.R. 51.5. Such traffic includes 911 traffic in the same manner as it does for local traffic, with no separate interconnection required based on traffic flow.

INTRADO: Intrado argued in Reply to AT&T's brief that the Commission had properly arbitrated the ICA under Section 251(a) and Section 251(c) of the Act. Among other points, Intrado maintained that, because of AT&T's dominance of the public switched telephone network, Intrado must be able to invoke all of the provisions of Sections 251 and 252 of the Act. Furthermore, AT&T's claim that Section 251(a) was never an open issue in this proceeding is without merit. For instance, AT&T discussed Section 251(a) at length in arguing against Intrado's desire to have AT&T establish a point of interconnection on its network. It is well-established that the Commission has the authority to render a decision on interconnection pursuant to authorities other than those cited by the parties. State commissions have the well-supported right to arbitrate under Section 251(a), as the Commission has acknowledged in other dockets. In the *Coserv* case cited by AT&T elsewhere, the Fifth Circuit wrote: "Congress contemplated that voluntary negotiation might include issues other than those listed in Section 251(b) and (c) and still provided that *any issue* left open after unsuccessful negotiation would be subject to arbitration by the [state commission]" (emphasis in original).

PUBLIC STAFF: The Public Staff noted that AT&T and Intrado both objected to this Finding of Fact, but for different reasons. AT&T objected that the Commission exceeded its jurisdiction in grounding rates involving AT&T-to-Intrado traffic under Section 251(a). Interestingly, AT&T did not argue this point in its proposed order, nor were other sources in the joint matrix or testimony very clear. For example, in AT&T witness Pellerin's testimony, she stated that the rates for AT&T-to-Intrado traffic should not fall under Section 251(c), but she also testified at page 22 of her direct testimony that "it is only appropriate to include relevant prices in the ICA for Scenarios 2 and/or 3 to the extent that the Commission requires inclusion of terms and conditions for such interconnection." Also, AT&T witness Constable Exhibit JEC-1 set out the responsibilities of the parties in various scenarios. Accordingly, it was reasonable for the Commission to conclude that AT&T had voluntarily negotiated these terms and to order the parties to pursue further negotiations.

For its part, Intrado resisted further negotiations on the rates it may charge AT&T, contending that the interconnection rates it had proposed were reasonable and, as such, should be adopted by the Commission.

The Public Staff agreed with the Commission that there is a lack of evidence in the record regarding the reasonableness of Intrado's proposed rates. Intrado has the burden of showing that its proposed rates are reasonable, but it has not provided cost studies or any other support for its rates, other than to cite to Ohio's having adopted

those rates. Such citation, in the absence of other evidence, which the parties had the opportunity to provide, is insufficient to sustain a finding for Intrado.

REPLY COMMENTS

AT&T: AT&T repeated its view that the appropriate rates to be applied should be those proposed by AT&T, which should be applied on a reciprocal basis, as well as its view that the Commission does not have the authority to arbitrate rates arising under Section 251(a) and include such rates in an interconnection agreement. AT&T concurred with the Public Staff's observation that Intrado has the burden of showing that its proposed rates are reasonable, that Intrado has provided no cost studies in support of those rates, and that the fact that Ohio has adopted those rates is insufficient grounds for adopting them here in the absence of other evidence. However, AT&T continues to disagree with the Public Staff and Intrado that it was reasonable to conclude that AT&T had voluntarily negotiated Section 251(a) rates or that the Commission has jurisdiction under Section 251(a) to include rates governing AT&T-to-Intrado interconnection.

INTRADO: Intrado argued that AT&T was wrong in saying that the *RAO's* reliance on Section 251(a) of the Act was unlawful. Intrado concurred with the Public Staff's observation in Initial Comments that AT&T had not shed any new light on this issue and there was thus no need for the Commission to alter its conclusions. Intrado also noted that AT&T treats 911 traffic in its interconnection agreements by requiring CLPs to establish a point of interconnection for "plain old telephone service" (POTS), which is governed by Section 251(c). Intrado reiterated that it had proposed wholesale, cost-based rates which are reasonable and which the Ohio PUC has approved. While Intrado generally supports the notion of reciprocal terms and conditions between the parties, Intrado has never agreed that each Party's pricing should or must be reciprocal.

DISCUSSION

The two points in contention concerning these issues were (1) the appropriate rates for AT&T-to-Intrado traffic and (2) whether the basis for such rates lies in Section 251(a).

There was universal agreement that AT&T's rates should apply concerning Intrado-to-AT&T traffic. With respect to AT&T-to-Intrado traffic as set forth in Scenario 2 and that portion of Scenario 3 involving a transfer of calls from AT&T-to-Intrado, the Commission asked the parties to negotiate an appropriate rate. If they could not agree, they were to come back to the Commission for resolution. The Commission indicated that its decision would be based on a standard of "reasonableness." Regrettably, the parties appear to have chosen not to follow the Commission's suggestion to negotiate and have, instead, once again presented their same rate recommendations to the Commission. Intrado supported its rates solely by reference to their having been approved by the Ohio PUC, while AT&T argued that its TELRIC rates should apply.

The Commission agrees with the Public Staff's comments that it was reasonable for the Commission to have concluded that AT&T had voluntarily negotiated these items and to have ordered the parties to pursue further negotiations. The Commission also agrees with the Public Staff that Intrado should have the burden of proof to show that its proposed rates were reasonable. Intrado has not done so. In the absence of cost studies or any other support for its rates, the fact that Ohio has adopted the rates is, standing alone, insufficient grounds to adopt Intrado's proposed rates. By contrast, AT&T is subject to TELRIC rates; and, as the *RAO* observed, these rates "have been validated and are acceptable to Intrado for Intrado-to-AT&T interconnection." Accordingly, the Commission has no other choice but to find that AT&T's rates are better substantiated and more reasonable than those proposed by Intrado and should thus apply in all scenarios.

Since the Commission has concluded that AT&T's rates should apply in all scenarios, the question of whether the basis for the rates for AT&T-to-Intrado interconnection lies in Section 251(a) is, for all practical purposes, moot; and it is not necessary for the Commission to further address questions relating to the application of Section 251(a) to rates in this docket.

CONCLUSIONS

The Commission finds it appropriate to conclude that the AT&T rates should apply as to all scenarios and that it is not necessary for the Commission to address the question of the application of Section 251(a).

FINDING OF FACT NO. 7 – MATRIX ISSUE NO. 3(b): What trunking and traffic routing arrangements should be used for the exchange of traffic when AT&T is the designated E911/911 service provider?

INITIAL COMMISSION DECISION

The ICA should require Intrado to establish trunking to the appropriate Point of Interconnection (POI) on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

MOTIONS FOR RECONSIDERATION

INTRADO: In its Objection to this Finding of Fact, Intrado requested that the Commission further explain the *RAO's* requirement that the parties provide reciprocal trunk group arrangements to include facilities and to ensure the reliable exchange of traffic between their networks. Intrado believes that further explanation will ensure both parties are aware of their rights and obligations for trunking.

INITIAL COMMENTS

AT&T: AT&T commented that no clarification was necessary on this issue from the Commission.

PUBLIC STAFF: The Public Staff noted that the Commission concluded that ICA the language should clearly allow Intrado to establish trunking either through its own facilities or those of a third party. Furthermore, the Public Staff suggested that, in the context of this issue and the Commission's conclusion, the phrase "reciprocal trunk group arrangements" simply refers to each party's equal responsibility to establish any necessary trunking to the other party's selective router under the same terms and conditions available to both parties.

REPLY COMMENTS

AT&T: AT&T agreed with the Public Staff's position that the phrase reciprocal trunk group arrangements simply refers to each party's equal responsibility to establish any necessary trunking to the other party's selective router under the same terms and conditions. AT&T asserted that no additional clarification was needed on this issue.

DISCUSSION

In the *RAO,* the Commission concluded that the parties would reciprocate in exchanging forecast information to ensure that each party agreed to the trunk equipment and facility requirements necessary to meet forecasted demand. In reaching this conclusion, the Commission utilized the phrase "reciprocal trunk group arrangements." The use of this phrase apparently caused some uncertainty in the minds of the parties. The Public Staff in its comments observed that the phrase "reciprocal trunk group arrangements" simply refers to each party's equal responsibility to establish any necessary trunking to the other's selective router under the same terms and conditions available to both parties. The Commission agrees with this Public Staff conclusion. The Commission determines that the exchange of trunk forecast information between service providers is fundamental to providing 911/E911 service to the respective end users. Accordingly, the Commission clarifies that the exchange of reciprocal trunk group arrangements simply refers to each party's responsibility to exchange trunking forecast to the other's selective router under the same terms and conditions available to both parties.

CONCLUSIONS

The Commission concludes that the original Finding of Fact is clarified as discussed above.

FINDINGS OF FACT NOS. 8, 9, 10, AND 11 (ISSUE NOS. 9-12 - MATRIX ISSUE NOS. 4, 4(a), 4(b), and 4(c)): What terms and conditions should govern points of interconnection (POIs) generally, and when: (a) Intrado Communications is the

designated 911/E911 service provider; (b) when AT&T is the designated 911/E911 service provider; and (c) when a fiber mid-span meet is used?

INITIAL COMMISSION DECISION

The Commission concluded that, with respect to Matrix Issue No. 4, AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T. With respect to Matrix Issue No. 4(a), the parties may negotiate and establish multiple POIs, or different POIs for different types of services. With respect to Matrix Issue No. 4(b), AT&T must allow Intrado to interconnect at a technically feasible point on AT&T's network when Intrado seeks to interconnect with AT&T's network as prescribed by Part 51.305 in the FCC rules. With respect to Matrix Issue No. 4(c), the Commission will not mandate any language in the ICA regarding meet point, but the parties are free to negotiate meet point locations.

MOTIONS FOR RECONSIDERATION

INTRADO: Intrado made the following Objections to these Findings of Facts:

Matrix Issue No. 4 – What terms and conditions should govern POIs generally?

The Commission should exercise its discretion under Section 251(a) of the Act to order AT&T to interconnect on Intrado's network when Intrado is the designated 911/E911 service provider.

Matrix Issue No. 4(a) – What terms and conditions should govern points of interconnection when Intrado is the designated 911/E911 service provider?

The Commission should exercise its discretion under Section 251(a) to locate the POI on Intrado's network when Intrado is the designated 911/E911 service provider. Intrado stated that this practice is consistent with the rulings of the FCC and the practices of several other states.

Moreover, Intrado argued that sound discretion and equity require the POI to be located on Intrado's network when Intrado is the designated 911/E911 service provider. Intrado suggested that, since AT&T is the only provider of 911/E911 services to PSAPs in the AT&T service territory, AT&T cannot separate itself from the practices which AT&T has established in providing 911/E911 services.

Intrado noted that AT&T has decided that 911 interconnection arrangements should be different from those used for plain old telephone service traffic. Because of this decision, the equities require AT&T to be subject to the same interconnection arrangements it imposes on CLPs when AT&T is the designated 911/E911 service provider.

Intrado noted that AT&T requires all CLPs and wireless carriers to interconnect at the appropriate selective router, i.e., the selective router serving the PSAP to which the 911 call is destined. That practice is consistent with the FCC's mandates that the selective router should be the cost allocation point for the exchange of 911/E911 traffic. Intrado asserted that, although the finding resulted in a cost allocation point beyond the carrier's switch, the FCC nevertheless found it was appropriate and consistent with industry practice. For these reasons, the Ohio PUC determined that, when Intrado is serving the PSAP the POI should be the selective router of the 911/E911 network provider and that an ILEC sending 911/E911 calls to Intrado PSAP customers is responsible for delivering those 911/E911 calls to an Intrado selective router location.

Matrix Issue No. 4(b) – What terms and conditions should govern points of interconnection when AT&T is the designated 911/E911 service provider?

The Commission should eliminate any ambiguity in the *RAO* that would undermine Intrado's right to designate the location of the POIs on AT&T's network, including a single POI, when Intrado seeks to interconnect with AT&T to deliver traffic to AT&T's customers.

Matrix Issue No. 4(c) – What terms and conditions should govern POIs when a fiber mid-span meet is used?

Intrado is entitled to designate the location of any meet point interconnection arrangement to be used by the parties and eliminate the suggestion that the parties are required to negotiate mutually agreeable meet point locations.

INITIAL COMMENTS

AT&T: The Commission allowed the parties flexibility in deciding on a POI, noting that the parties are free to choose to interconnect at a single POI, or at several different POIs, as may be decided at their discretion. The Commission should reject Intrado's request to modify the *RAO.*

AT&T agreed with the Commission that AT&T should not be required to establish interconnection at two geographically diverse locations on Intrado's network when Intrado serves as the designated 911/E911 service provider; and, that it is unreasonable to expect AT&T to interconnect with Intrado at Intrado's selective routers, which may be miles apart, or removed from a particular AT&T exchange service area by LATA boundaries. AT&T also argued that Intrado must not be allowed to make the ILECs and other telecommunications competitors incur operating expenses which are unreasonable or unwarranted because of Intrado's operating paradigm.

AT&T noted that Intrado had requested that the Commission clarify the *RAO* to indicate that Intrado is entitled to designate the location of the POI on AT&T's network, including a single POI, when Intrado seeks to interconnect with AT&T for the exchange of traffic and to designate the meet point interconnection arrangement to be used by the parties.

AT&T objected to Intrado's requested modifications because the *RAO* clearly provides that AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T. AT&T noted that the *RAO* provided that AT&T may choose to interconnect with Intrado or any other carrier in a contractual arrangement which is satisfactory to both parties and that AT&T and Intrado may negotiate a meet point arrangement that meets both parties' needs.

INTRADO: Intrado maintained that the diversity and redundancy requirements of 911 communications demand the establishment of one-way POIs on AT&T's and Intrado's networks. Intrado protested that AT&T's selective interpretation of Sections 251(a) and 252(c)(2) of the Act to support a position that only one POI should be implemented ignores several truths concerning AT&T's 911/E911 service: namely, the manner in which AT&T requires CLPs to interconnect with AT&T's network to reach AT&T's PSAP customers; the way in which AT&T currently provides 911/E911 services between its own 911 calling customers and PSAP calling customers and PSAP customers; and well-established industry practices. Intrado seeks a POI arrangement equal to AT&T's, as guaranteed under statute. The diversity and redundancy requirements supported by Intrado are vital to ensuring that Intrado can fully carry out its public safety duties under Section 251(c)(3) of the Act.

AT&T has argued that matters under Section 251(a)(1) are not subject to arbitration under Section 252 and that there is no language anywhere in Sections 251 or 252 that delegates to state commissions the authority to arbitrate or decide issues under Section 251(a)(1). AT&T has also argued that the only time ILECs have a duty to negotiate with a requesting carrier under Section 252(b) is when the carrier requests an agreement to implement Sections 251(b) and (c), not Section 251(a)(1); and the only time an ILEC can be compelled to arbitrate an agreement under Section 252(b) is in cases where it had a duty to negotiate under Section 251(b). AT&T's argument in this regard is unsupportable.

Intrado argued that Section 252 does not foreclose a state's authority to arbitrate disputes arising under Section 251(a), nor does it restrict such arbitration to Sections 251(b) and 251(c). Clearly, Section 251(a) affords any party to a Section 252 negotiation the right to petition a state commission for arbitration, and Section 252(a)(1), which concerns voluntary negotiations, enables parties to enter into an ICA without regard to Sections 251(b) or 251(c).

Intrado stated that AT&T suggested that the issue of selective router POIs was not truly open for the purpose of arbitration. The Commission has well-established authority to apply any applicable law, if it determines that the interconnection framework advanced by Section 251(a) was the appropriate basis for interpretation. The Commission has properly considered the issue of one-way POIs using appropriate statutory interpretation.

Intrado argued that AT&T has misled the Commission into thinking that there must be separate POIs on each carrier's network. Not only is Section 251(c)(2) silent on whether particular types of services warrant special treatment, but a POI on an ILEC's network can be used for the mutual exchange of all kinds of traffic between the ILEC and the CLP. Furthermore, AT&T claimed that Sections 251(c)(2) and 251(a)(1) do not impose cumulative, redundant duties on the ILEC. Once the ILEC interconnects to a carrier under Section 251(c)(2), it has fulfilled any conceivable duty it could have under Section 251(a)(1) as well.

Intrado maintained that requiring AT&T to interconnect with Intrado at its selective router is not in addition to the duties imposed by Section 215(c)(2), as claimed by AT&T, but is simply the means by which AT&T compels CLPs to interconnect with AT&T's own PSAP customers. Intrado pointed out that the ILEC-established industry practice is for the POI to connect to the 911/E911 network at the selective router, per the FCC's interpretation of the proper location for the 911/E911- traffic cost-allocation point. Intrado warned that to follow AT&T's recommendations would engender a radical alteration in the organization and functionality of 911/E911 services.

Intrado further stated that Section 251(c)(2) and FCC rules support Intrado's argument for equality in PSAP connection. These provisions instruct AT&T to provide Intrado with interconnection that is at least equal in quality to that provided by AT&T to itself or to any subsidiary, affiliate, or any other party to which AT&T provides interconnection. Intrado reiterated that it simply wants AT&T to comply with an interconnection arrangement on Intrado's network that AT&T designed and implemented (per public safety and concerns and industry standards) when it was the designated 911/E911 service provider.

Intrado argued that Section 251(a) is not redundant to Section 251(c)(2). The Commission has the authority to apply its Section 252 arbitration and enforcement authority over Section 251 agreements. Also, Sections 251(c)(2) and 251(a) are complementary provisions in the case of Intrado's service. Section 251(c)(2) compels AT&T to allow Intrado to enter the competitive 911/E911 marketplace by opening its network under Section 251(c)(2), whereas Section 251(a) governs the substantive arrangements between selective routers that enable 911/E911 service to function as it has under the incumbent. Intrado argued that the two provisions work hand-in-hand at different stages of the competitive process, rendering AT&T's objections void. Intrado stated that the FCC's exclusion of economic concerns from the determination of technical feasibility further fortifies its argument.

Lastly, Intrado commented that AT&T's contention that the duties outlined in Section 251(a) create an unlawful taking is true only if AT&T is not compensated for services. Intrado contended that in order for AT&T's customers to complete their emergency calls to Intrado served PSAPs, AT&T must provide connections to the selective routers of the 911 service provider that serves the caller's designated PSAP.

PUBLIC STAFF: The Public Staff stated that it believes the *RAO* is clear on AT&T's obligations to provide interconnection to Intrado. The Public Staff stated, however, that it is not opposed to the Commission clarifying that Intrado may designate the location of the POI on AT&T's network, including a single POI as provided by Part 51.305 of the FCC's rules.

The Public Staff acknowledged that Intrado requested the Commission to exercise its authority and order that the POI be located on Intrado's network when Intrado is the designated 911/E911 service provider. The Commission explicitly declined to impose the requirement on AT&T that it be required to establish interconnection at Intrado's selective routers when Intrado served as the designated 911/E911 service provider. The Public Staff recommended that the Commission's conclusion to allow the parties to negotiate for the establishment of multiple POIs be upheld and affirmed.

Lastly, the Public Staff noted that Intrado requested the Commission to delete the language allowing the parties to negotiate mutually agreeable meet point locations. The Public Staff noted that the Commission pointed out in its discussion that Part 51.305 of the FCC's rules does not provide guidance for the location of the POI when interconnecting using the meet point. The Public Staff concurred with this assessment. Thus, the Commission should affirm that the parties are free to negotiate mutually agreeable meet point locations.

REPLY COMMENTS

AT&T: AT&T stated that it agreed with the Public Staff on Findings of Fact Nos. 9 and 11, and also stated that the Commission should reject Intrado's request for modifications on these two Findings of Facts.

AT&T did not provide any additional comments on Findings of Fact Nos. 8 and 10.

DISCUSSION

In the *RAO* the Commission allowed the parties flexibility in deciding on a point of interconnection, noting that the parties are free to choose to interconnect at a single point of interconnection or at several different points of interconnection, as may be decided by the parties based upon considerations of basic network design characteristics. As noted by the Public Staff, the *RAO* is clear on AT&T's obligations to provide interconnection to Intrado. Thus, the Commission rejects Intrado's request to modify the *RAO.*

For the reasons stated in the *RAO*, the Commission explicitly declined to require AT&T to establish interconnection at Intrado's selective routers when Intrado served as the designated 911/E911 service provider. We are not inclined to change or modify our decision on this issue, nor, in response to the arguments made in the motion to reconsider, are we inclined to modify our decision regarding the meet points. However,

the Commission reiterates the following point made in the *RAO*, that nothing prevents the parties from negotiating the establishment of multiple POIs.

Intrado has repeatedly stated that, when it is the designated 911/E911 service provider, it requires ANI and ALI data to insure that the proper emergency services are dispatched to the proper calling party's location. However, the Commission notes that AT&T reiterated in its Reply Comments that when a 911 call is transferred via voice trunks by AT&T, from one PSAP on an AT&T selective router to another PSAP on the same selective router, AT&T delivers ANI with the call, which the PSAP then uses to query an external database for the ALI. The transmission of ANI information is an embedded characteristic of the signaling and transmission protocol in initiating and completing a telephone call on the public switched telephone network (PSTN). As such, the sending of ALI data appears to be an off-network functionality, i.e., not embedded in the telephone call transmission on the PSTN. Therefore, the operating parameters of Intrado's network are different from that of the PSTN.

CONCLUSIONS

The Commission concludes that Findings of Fact Nos. 8, 9, 10, and 11 should be affirmed.

FINDING OF FACT NO. 12 – MATRIX ISSUE NO. 5: (a) Should specific terms and conditions be included in the ICA for inter-selective router trunking? If so, what are the appropriate terms and conditions? (b) Should specific terms and conditions be included in the ICA to support PSAP-to-PSAP call transfer with automatic location information (ALI)? If so, what are the appropriate terms and conditions?

INITIAL COMMISSION DECISION

The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other ILECs in North Carolina. In addition, ANI and ALI information transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.

MOTIONS FOR RECONSIDERATION

INTRADO: Intrado stated that the Commission's Finding of Fact is not clear and that the Commission should clarify that ANI and ALI information must both be retained and transferred when 911 calls are transferred between the parties' selective routers. Intrado argued that this transfer of information is necessary to provide for the seamless and transparent exchange of information between their networks.

INITIAL COMMENTS

AT&T: AT&T commented that the Commission's *RAO* provided that ANI and ALI information that were initially transmitted to the serving AT&T central office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. AT&T stated that when AT&T transfers a 911 call via voice trunks, AT&T delivers ANI with the call. To enable the transfer of ALI information as proposed by Intrado AT&T would incur costs to develop the ALI transfer function which neither Intrado nor a PSAP has agreed to pay. AT&T argued that Intrado's proposed clarification request should therefore be rejected as it is another attempt by Intrado to inappropriately shift costs and obligations onto AT&T.

INTRADO: Intrado noted that AT&T objected to the inclusion of selective routing matters in the ICA, stating that the establishment of transfer capability should be the subject of separate negotiations where appropriate terms can be worked out with the PSAPs. AT&T misconstrued the Embarq Arbitration Award, which AT&T cited for the proposition that, because inter-selective routing constitutes a peering arrangement, not the interconnection of a CLP and ILEC networks, Sections 251(a) and 251(c) cannot be invoked.

Intrado stated that inter-selective routing is vital to an efficient and reliable 911/E911 system, as AT&T recognized in the construction of its own heavily redundant 911/E911 system. A call transferred over the PSTN loses ALI data, which increases the risk of misdirection or delay, abrogating the advantages inherent in a modern E911 system. AT&T's plan to engage in PSAP negotiations amounts to a piecemeal approach to safety and directly contravenes the Commission's responsibility to safeguard and promote the public interest.

PUBLIC STAFF: The Public Staff commented that Intrado requested that the Commission clarify that that ANI and ALI information must be retained and transferred when the call is transferred to the other party's router. The Public Staff further commented that it believed that the requirement to transfer ANI and ALI information when the call is transferred between routers was implied in the Commission's conclusion. The Public Staff suggested that since the finding did no explicitly require the retained information to be transferred with the call, the conclusion should be clarified to require that the transferred call should retain the ANI and ALI information.

REPLY COMMENTS

AT&T: AT&T did not agree with the Public Staff that the Commission should clarify the *RAO* to require that the transferred 911/E911 call retain ANI and ALI information. AT&T reiterated the fact that, today, when a 911 call is transferred via voice trunks by AT&T from one PSAP on an AT&T selective router to another PSAP on the same selective router, AT&T delivers ANI with the call. The PSAP then uses the ANI information to query an external database for the ALI. AT&T stated that, in order for AT&T to be able

to transfer ALI, it would have to incur costs to develop the ALI transfer function. Neither Intrado nor any PSAP has yet agreed to pay these costs.

INTRADO: Intrado observed that the Public Staff agreed with Intrado that the *RAO* should be clarified to explicitly require ANI and ALI to both be retained and transferred when a 911 call is transferred between the parties' selective routers. AT&T objected to this clarification because it would allegedly incur costs to transfer the ALI. AT&T should not, at this point, be allowed to raise cost issues associated with the transfer of ALI between the parties' networks.

Intrado said that AT&T is reluctant to adhere to the *RAO*'s implicit requirement that ANI and ALI be transferred when a 911 call is transferred between the parties' selective routers. Intrado reiterated that this capability is critical for emergency services personnel to locate the 911 caller, especially for wireless or VoIP calls, or even wireline calls where the caller cannot speak. Intrado believes strongly that the ALI transfer requirement should be explicitly stated in the Commission's final arbitration order to avoid future disputes between the parties and to ensure consumers and public safety agencies receive the most reliable and redundant 911 services available.

DISCUSSION

The Commission notes that, when a 911 call is transferred via voice trunks by AT&T from one PSAP on an AT&T selective router to another PSAP on the same selective router, AT&T delivers ANI with the call, which the PSAP then uses to query an external database for the ALI. Intrado maintains that the transfer and retention of ANI and ALI capability is critical for emergency services personnel to locate the 911 caller, especially for wireless or VoIP calls, or even wireline calls where the caller cannot speak. Both arguments are plausible.

The Commission notes that, Intrado claimed that AT&T raised the issue of the costs to provide the transfer and retention of ANI and ALI between the selective routers as fundamental to its objection to providing this 911 network feature. Actually, AT&T at the outset of this issue suggested that the PSAP, as the customer, must pay for the transfer and retention network feature contemplated by Intrado. Neither party voiced a concern that, technically, the transfer and retention of ANI and ALI as a 911 network feature cannot be provided if subscribed to by the PSAP as a network feature requirement necessary to satisfy contractual 911 service obligations. However, the Commission believes that the 911/E911 service standard to be included in the ICA should be based on the premise that, today, when a 911 call is transferred via voice trunks, it delivers ANI with the call.

The Commission realizes that the PSTN precludes the general applications of a growing list of technology driven advancements, which, it can be argued, are needed by all consumers. However, the standards of the ICA are governed by the primary network structure and its functionality, which serves the general public. These provide a vehicle to provide the general public highly trustworthy access to safety and emergency

services. However, the Commission believes that, where needed, the capability to provide the transfer and retention of ANI and ALI, the proper instrument to provide this 911 network service feature is through a commercial agreement.

CONCLUSIONS

The Commission concludes that no clarification of its original Finding of Fact is warranted on this issue. The Finding of Fact on this issue is affirmed.

FINDING OF FACT NO. 13 – MATRIX ISSUE NO. 6: (a) Should requirements be included in the ICA on a reciprocal basis for: (1) trunk forecasting; (2) ordering; and, (3) service grading? If so, what are the appropriate requirements?

INITIAL COMMISSION DECISION

Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal, and AT&T should be required to use Intrado's designated ordering process to obtain services form Intrado.

MOTIONS FOR RECONSIDERATION

AT&T: AT&T stated that the only appropriate ordering process for use in the ICA is AT&T's, which uses industry standards. This process was developed collaboratively with other carriers, and can be changed only through a formal process; by contrast Intrado's process was developed unilaterally and can be changed at any time. AT&T further stated that, while Intrado proposes a web-based system that only Intrado uses, the rest of the industry is using the Telcordia EXACT system for these ASRs for ordering. AT&T argued that the better, more equitable, and safer approach is to make the ordering procedures reciprocal and conform to industry standards.

INITIAL COMMENTS

INTRADO: Intrado stated that both parties will exchange 911/E911 service traffic and thus purchase services from each other, making language governing the ordering and pricing of services and facilities a vital component of the ICA. Intrado further stated that it is only in this way that interoperability between Intrado and AT&T networks – an essential quality of any ICA – can be assured.

PUBLIC STAFF: The Public Staff noted that parties only provided limited evidence concerning the ordering process. The Public Staff commented that AT&T and Intrado both proposed similar processes in their testimony in that they both use Access Service Requests. The Public Staff stated that AT&T did not provide any new arguments that should compel the Commission to change its ruling requiring AT&T to use Intrado's

ordering process. The Public Staff believes that the Commission should affirm Finding of Fact No. 13.

REPLY COMMENTS

AT&T: AT&T urged the Commission to reject Intrado's language requiring AT&T to follow Intrado's ordering processes as posted on Intrado's website. AT&T further warned that forcing it to use Intrado's new system would impose additional costs on AT&T that it would not incur if Intrado used the industry system that every other carrier uses. AT&T argued that Intrado's system is untested and that no one knows whether it is reliable. According to AT&T, the better, safer, and more equitable approach is to make the ordering procedures reciprocal and conform to industry standards.

DISCUSSION

After carefully reviewing the comments, the Commission agrees with the Public Staff that AT&T did not provide any new arguments that should compel the Commission to change its ruling requiring AT&T to use Intrado's ordering process. Accordingly, the Commission finds it appropriate to affirm Finding of Fact No. 13.

CONCLUSIONS

The Commission concludes that Finding of Fact No. 13 shall be affirmed.

IT IS, THEREFORE, ORDERED as follows:

1. That, in accordance with the Commission's January 24, 2001 and November 3, 2000 Orders issued in Docket No. P-100, Sub 133, Intrado and AT&T shall jointly file the required Composite Agreement by no later than Monday, October 12, 2009.

2. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of September, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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