DOCKET NO. 36185

IN THE MATTER OF THE PETITION OF INTRADO, INC. FOR ARBITRATION PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO ESTABLISH AN INTERCONNECTION AGREEMENT WITH GTE SOUTHWEST D/B/A VERIZON SOUTHWEST	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER GRANTING JOINT MOTION FOR EXTENSION OF TIME

On December 9, 2009, Intrado Communications Inc.[1] and GTE Southwest Incorporated d/b/a Verizon Southwest filed a Joint Motion for Extension of Time in which they requested that the deadline for motions for reconsideration of the Order on Threshold Issue No. 1 and Denying Requested Relief in Petition be extended to December 28, 2009 and that the deadline for responses to such motions be extended to January 8, 2010.

The Joint Motion for Extension of Time is granted.

[1] Effective October 8, 2009, Intrado Inc. transferred its service provider certificate of operating authority to its wholly owned subsidiary, Intrado Communications Inc. *See Application of Intrado Inc. for an Amendment to Its Service Provider Certificate of Operating Authority*, Docket No. 37441, application (Sept. 4, 2009) at 3 and Notice of Approval (Oct. 8, 2009).

SIGNED AT AUSTIN, TEXAS the 11th day of December 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

SUSAN E. GOODSON, ARBITRATOR

LIZ KAYSER, ARBITRATOR

DOCKET NO. 36185

IN THE MATTER OF THE PETITION OF INTRADO, INC. FOR ARBITRATION PURSUANT TO SECTION 252(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, TO ESTABLISH AN INTERCONNECTION AGREEMENT WITH GTE SOUTHWEST D/B/A VERIZON SOUTHWEST	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ON THRESHOLD ISSUE NO. 1 AND DENYING RELIEF REQUESTED IN PETITION

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I. Summary

The Arbitrators find that Intrado, Inc. (Intrado) does not provide "telephone exchange service" or "exchange access" and thus its request for physical interconnection with GTE Southwest, Inc. d/b/a Verizon Southwest (Verizon) to offer emergency services in Texas does not fall under Section 251(c)(2) or Section 252(b) of the Communications Act of 1934, as Amended (FTA).[1] Therefore, the Arbitrators deny the relief requested in Intrado's petition. The Arbitrators rule on only the first threshold issue because it is dispositive and resolution of the remaining threshold issues is not necessary. If this order is appealed and overturned, the Arbitrators will rule on all of the remaining threshold issues.

II. Introduction and Procedural History

On September 24, 2008, Intrado filed with the Public Utility Commission of Texas (Commission) a petition for arbitration with Verizon pursuant to FTA § 252(b) to establish certain rates, terms, and conditions for interconnection and related arrangements (Petition).[2] In its Petition, Intrado states that it seeks physical interconnection with Verizon to offer emergency services in Texas, including a competitive alternative to Verizon's 9-1-1 network provided to Public Safety Answering Points (PSAPs) and other public safety agencies.[3] To provide such services, Intrado asserts that it requires interconnection with Verizon to ensure that customers of each carrier can seamlessly complete or receive calls.[4] On October 7, 2008, Intrado and Verizon (collectively, the Parties) filed their initial Joint Decision Point List (DPL) setting forth the list of issues, the relevant contract provisions, and each party's position on the outstanding issues.[5]

A prehearing conference was held on October 8, 2008. The Arbitrators instructed the Parties to file initial briefs and reply briefs on the following threshold legal issues:

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104. 110 Stat. 56 (codified as amended in scattered section of 15 and 47 U.S.C.) (FTA).

[2] Petition for Arbitration (Sept. 24, 2008).

[3] Petition for Arbitration at 5.

[4] *Id.*

[5] Initial Joint Decision Point List (Oct. 7, 2008) (Initial Joint DPL).

1. Are "emergency services" "telephone exchange service" or "exchange access" for purposes of FTA § 251(c)(2)(A)?

2. Can Verizon be compelled to arbitrate an interconnection agreement (ICA) solely for the exchange of "emergency services" traffic?

3. Assuming Verizon can be compelled to arbitrate an interconnection agreement solely for the exchange of "emergency services" traffic; does such interconnection entitle Intrado to interconnect in a different manner than other competitive local exchange carriers (CLECs)?

4. What authority permits this Commission to establish a competitive "emergency services" network for wireline telecommunications customers?

5. What authority permits this Commission to require equal access to competitive "emergency services" providers for wireline telecommunications customers?

On October 17, 2008, the Texas Commission on State Emergency Communications, the Texas 9-1-1 Alliance, and the Municipal Emergency Communications Districts Association (collectively the Texas 9-1-1 Agencies) requested leave to file a statement of position.[6] On October 31, 2008 the Texas 9-1-1 Agencies filed their joint statement of position addressing the threshold issues.[7] In addition to the authority recited below the Texas 9-1-1 Agencies point to Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 60.124 (Vernon 1998 & Supp. 2005) (PURA) and FTA § 251(d)(3)(A) as granting the Commission additional authority over the selective routing wireline E9-1-1 networks.[8] The Texas 9-1-1 Agencies stated that a compelling state and local public safety interest in emergency services exists regardless of the technology used or the provider involved[9] and stated that any rulings on the threshold issues must be subject

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[6] Unopposed Joint Motion for Leave to File a Statement of Position (Oct. 17, 2008).

[7] Joint Statement of Position on Threshold Issues of the Texas Commission on State Emergency Communications, the Texas 9-1-1 Alliance, and the Municipal Emergency Communication Districts Association (Oct. 31, 2008).

[8] *Id.* at 4.

[9] *Id.*

to the requirements and responsibilities that the Commission has established in its 9-1-1 orders and rules.[10]

On October 20, 2008, Verizon filed its response to Intrado's Petition.[11] Verizon claims the Commission should reject Intrado's unique, unprecedented proposals, which disregard the FTA, the Federal Communication Commission's (FCC) implementing rules, and Commission precedent.[12]

Intrado filed an initial brief[13] and a reply brief.[14] Verizon filed an initial brief[15] and a reply brief.[16] Since the initial and reply briefs were filed, the Parties have filed additional and supplemental information supporting their respective positions regarding other states' actions on similar Intrado petitions.[17] Additionally, the FCC has granted Intrado's request and preempted

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[10] *Id.*

[11] Verizon's Response to Intrado's Petition for Compulsory Arbitration Under the Federal Telecommunications Act (Oct. 20, 2008) (Verizon's Response).

[12] *Id.* at 2.

[13] Initial Brief of Intrado Inc. on Threshold Legal Issues (Oct. 31, 2008) (Intrado Initial Brief).

[14] Reply Brief of Intrado Inc. on Threshold Legal Issues (Nov. 7, 2008) (Intrado Reply Brief).

[15] Initial Brief of Verizon Southwest in Response to Threshold Legal Issues (Oct. 31, 2008) (Verizon Initial Brief).

[16] Reply Brief of Verizon Southwest on Threshold Legal issues (Nov. 7, 2008) (Verizon Reply Brief).

[17] Verizon Southwest's Letter to the Arbitrators (Nov. 18, 2008); Verizon filing concerning two Florida Public Service Commission's (FPSC) and one from the West Virginia Public Service Commission (WVPSC) rulings against similar arbitration requests by Intrado); Response to 11.18.08 Correspondence (Nov. 18, 2008) (Intrado's response to Verizon's Nov. 18, 2008 letter stating that it corrected inaccuracies and misstatements, i.e. that the WVPSC's ruling is not a final award and that neither the FPSC nor the WVPSC held that Intrado was not entitled to interconnection); Letter to Arbitrators re: Florida PSC Orders (December 5, 2008) (Verizon filing providing the final votes and two released FPSC orders); Intrado Supplemental Authority Filing (Dec. 5, 2008) (filing a copy of a decision by the Indiana Regulatory Commission (IRUC) wherein INdigital Telecom's commercial agreement with Verizon was interpreted to be a 252 interconnection agreement and wherein INdigital Telecom sought to provide competitive 911/E911 like Intrado and a proposed order filed by staff of the North Carolina Utilities Commission (NCUC) finding that Intrado's competitive 911/E911 constitutes telephone exchange service); Letter to Arbitrators re: Intrado's 12.5.08 Filing (Dec. 9, 2008) (Verizon response to Intrado 12.5.08 supplemental authority pointing out that the IRUC order would be appealed and that the proceeding was brought under state law not the FTA and that the IRUC determined that because the agreement ostensibly looked like an FTA interconnection agreement, its filing was mandated under federal law); Motion for Reconsideration (Jan. 6, 2009) (Intrado motions to reconsider the FPSC's decisions on Intrado's arbitrations with Embarq and AT&T); Intrado Supplemental Authority (March 5, 2008) (providing a copy of the Ohio Public Utility Commission's (OPUC) ruling that Intrado's EIN is telephone exchange service); Letter Regarding Vote Sheets with Regard to Intrado's Motions for Reconsideration of AT&T Florida and Embarq Florida Inc. (March 9, 2009) (Verizon's response to Intrado's 3.5.09 filing providing the Arbitrators with copies of the vote sheets of the FPSC denying Intrado's motions to reconsider in the AT&T and Embarq arbitrations); Letter to Arbitrators Forwarding Copies of Illinois Commerce Commission Arbitrators'

the Virginia Corporation Commission in two arbitrations that address the same issues involved in the instant docket, although the FCC has not yet ruled on the merits.[18] The Arbitrators asked the Parties whether this proceeding should be abated pending the outcome of the FCC's arbitrations.[19] Both Parties responded that this arbitration should not be abated.[20] A glossary of important terms is provided in Attachment 1.

III. Jurisdiction

The Commission's jurisdiction to approve, reject, or arbitrate FTA §§ 251/252 ICAs is found in federal law.[21] The FCC promulgated rules implementing the FTA guidelines and requirements for ICA approval, rejection, or arbitration.[22] Accordingly, this Commission promulgated procedural rules pursuant to which it may exercise its authority to approve, reject, or arbitrate an ICA.[23]

Award and Two Florida PSC Orders re: Intrado Petitions (April 2, 2009) (Copies of order from the Illinois Commerce Commission (ICC) finding that Intrado's 911/E911 is not telephone exchange service and that Intrado is entitled to FTA § 251(a) interconnection but not FTA § 251(c) interconnection, and also overturning earlier ICC precedent that found Intrado's predecessor's service was telephone exchange service; and two FPSC final orders denying Intrado's motions for reconsideration in the AT&T and Embarq arbitrations); Intrado Supplemental Authority (April 30, 2009) (updating Arbitrators on release of recommended arbitration order from NCUC finding that Intrado's 911/E911 is telephone exchange service and Intrado is entitled to 251(c) interconnection).

[18] Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, Embarq), WC Docket No. 08-33, Memorandum Opinion and Order at, 23 FCC Rcd. 8715, 8717 (WCB 2008)(June 4, 2008); see also Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively Verizon), WC Docket No. 08-185, Memorandum Opinion and Order, 23 FCC Rcd. 15008, 15011 (WCB 2008) (October 16, 2008).

[19] Order No. 3 at 1 (June 17, 2009).

[20] Intrado's Comments Responding to Order No. 3 (July 2, 2009); Verizon's Comments in Response to Order No. 3 (July 2, 2009).

[21] 47 U.S.C. 252.

[22] 47 C.F.R., CHAPTER I, SUBCHAPTER B, PART 51.

[23] TEX. ADMIN. CODE, TITLE 16, PART 2, CHAPTER 21, Subchapter D.

IV. Threshold Issue No.1 - Are "emergency services" "telephone exchange service" or "exchange access" for purposes of § 251(c)(2)(A) of the Federal Telecommunications Act of 1996?

A. Intrado's Position

Intrado does not claim that its 911/E911 service is "exchange access," but does claim that it is "telephone exchange service." Intrado states that its "911/E911" services are provided over an enhanced internet protocol (IP) technology network.[24] Intrado notes that it is certificated by the Commission to offer competitive local exchange services.[25] Intrado asserts that its 911/E911 service allows subscribers to "'intercommunicate' as defined in FTA § 153(47)(A) and it allows subscribers to 'originate and terminate' a telecommunications service as described in FTA § 153(47)(B)."[26] Intrado goes on to say that its 911/E911 services "allow Texas consumers to be connected with PSAPs and communicate with local emergency personnel."[27]

Intrado holds a service provider certificate of authority (SPCOA) in Texas[28] and Intrado points to its certification as proof that its 911/E911 is telephone exchange service.[29] Intrado notes that other states have recognized the benefits of its 911/E911 services and have determined that it is a "telephone exchange service."[30] Intrado explains that its 911/E911service has the same qualities as other services deemed to be telephone exchange service by the FCC, specifically noting that the FCC has said that "[i]n this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a

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[24] Petition at 5.

[25] *Id.* at 3.

[26] *Id.* at 4.

[27] *Id.* at 4.

[28] Application of Intrado, Inc. for An Amendment to its Service Provider Certificate of Operating Authority, Docket No. 34579, Notice of Approval (Sept. 10, 2007) (removing the data-only restriction and amending certificate to reflect Intrado's authority to provide facilities-based, data, and resale telecommunications services throughout the state of Texas).

[29] Petition at 15.

[30] *Id.* at 6.

central goal of the 1996 Act."[31] Intrado says its 911/E911 service has the same quality as other services deemed to be telephone exchange service by this Commission in 2000.[32]

Intrado states that it seeks interconnection with Verizon for the "mutual exchange" of traffic.[33] Intrado claims that while 9-1-1 trunks are generally one-way trunks, they may be used for two-way traffic, and cites as an example the "hookflash" capability of its 911/E911 to obtain dial tone and originate a bridged call to a third party.[34] Intrado also states that the "mutual exchange" of traffic need not actually occur over the same trunks.[35] Intrado also states that even though the 9-1-1 trunks are engineered as one-way, they support two-way voice.[36]

Intrado states that FTA § 251 was "intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets."[37] Intrado argues that this includes the provision of 911/E911 services to PSAPs.[38] Intrado says it cannot offer its competitive 911/E911 service to Texas public safety agencies without establishing the necessary interconnection and interoperability arrangements with Verizon pursuant to Section 251(c) of the FTA.[39] Intrado notes that its 911/E911 service is a competitor to the wireline E911 network, which by definition is a dedicated network that is interconnected but largely separate from the public switched telephone network (PSTN).[40] Intrado goes on to say that even though its

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[31] Intrado Initial Brief at 5 (citing *In the Matter of the Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, Order on Remand, 15 FCC Rcd. 385 at ¶ 21 (1999) (*Advanced Services Order*)).

[32] *Id.* at 6.

[33] *Id.* at 8.

[34] *Id.* at 8.

[35] *Id.* at 8.

[36] *Id.* at 8.

[37] Intrado Reply Brief at 1-2 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 4 (1996) (Local Competition Order) (intervening history omitted), *aff'd by AT&T Corp. v Iowa Utils. Bd.*, 525 U.S. 366 (1999)).

[38] *Id.* at 2.

[39] *Id.* at 2.

[40] 47 C.F.R. 9.3(1).

911/E911 service is a competitor to the wireline E911 network, it could still be classified as telephone exchange service.[41]

Intrado claims that Verizon's interpretation of telephone exchange service as being exchange based rather than jurisdictionally based is incorrect.[42] Intrado states that the concept of an exchange is based on geography and location, not the "local wire-center" as claimed by Verizon.[43] Intrado goes on to say the FCC has found that the definition of telephone exchange service does not require a specific geographic boundary.[44] Intrado claims "geographic" or "local areas" are not necessarily based on incumbent local exchange (ILEC) exchanges and that this is the reason that expanded area service (EAS) and expanded local calling service (ELCS) were developed to ensure that all members of a "community of interest" can reach other subscribers without incurring a toll charge.[45] Intrado asserts that ILEC exchange boundaries are inapplicable to 911/E911 services.[46] Intrado posits that the FCC and the federal district court overseeing the Modified Final Judgment recognized that many 911/E911 "transmissions cross LATA (local access and transport area) boundaries."[47] The court specifically waived LATA boundaries for Bell Operating Company provision of 9-1-1 emergency services.[48] The FCC recognized that selective routers often serve 9-1-1 callers and PSAPs in more than one LATA.[49]

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[41] Intrado Initial Brief at 6 (Note: the Arbitrators do not agree with Intrado's analysis of the FCC's discussion referenced in its footnote 17; the FCC was discussing local loop alternatives, not 9-1-1 service technology alternatives, when it talked about "separate from the public switched telephone network").

[42] Intrado Reply Brief at 5 (Nov. 7, 2008) (Intrado Reply Brief).

[43] *Id.* at 5 (citing to *Advanced Services Order* ¶ 22).

[44] *Id.* at 6 (citing to *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, ¶ 30 (1998)).

[45] *Id.* at 6 (citing generally to *Petitions for Limited modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, 12, FCC Rcd 10646 (1997)).

[46] *Id.* at 6 (citing to *Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 51 (1998)).

[47] *Id.* at 6-7 (citing Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities, 13 FCC Rcd. 2627, ¶ 20 (1998) (*Forbearance Order*).

[48] Intrado Reply Brief at 7 (citing *United States v. Western Electric*. Co., Civil Action no. 82-0192, Misc. No. 82-0025 IPI), slip op. at 5 n.8 (D.D.C. Feb. 6, 1984).

[49] *Id.* at 7 (citing to *Forbearance Order* ¶ 9).

Intrado argues that the capabilities an end user customer expects to receive with its "exchange service charge" have no bearing on Intrado's competitive 911/E911 service to be provided to Texas PSAPs and public service agencies.[50] Intrado states that its customers . . . will be subject to an "exchange service charge" for its receipt of telephone exchange service from Intrado.[51] Furthermore, the FCC has determined "that any charge" assessed for the service would be considered the "exchange service charge."[52] Intrado says its service meets this element of the definition because Intrado's PSAP customers will obtain the "ability to communicate within the equivalent of an exchange area as a result of entering into a service and payment agreement with" Intrado.[53] Lastly, Intrado states that the FCC has stated that the "exchange service charge" portion of the definition of telephone exchange service "comes into play only for the purposes of distinguishing whether or not the service is local."[54]

B. Verizon's Position

Verizon claims that Intrado is not seeking a genuine interconnection agreement but instead seeks a broad shift in the paradigms between incumbent and competitive carriers that were carefully constructed by the FTA, under the guise of "emergency services."[55] Verizon states that the plain language of the FTA makes clear that "emergency service" is basically a specially routed one-way 9-1-1 calling service to a PSAP and is not within the scope of telephone exchange service.[56] Verizon points out that FTA § 153(47) was part of the Communications Act of 1934 and that subparagraph B was added by the FTA.[57] Verizon states that Intrado's proposed ICA language makes it clear that Intrado's 911/E911 service does not even meet the broad language of FTA § 153(47)(A).[58] Verizon says the key issue in Threshold

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[50] *Id.* at 7.

[51] *Id.* at 7.

[52] *Id.* at 7-8 (citing to *Advanced Services Order* ¶ 27).

[53] *Id.* at 8.

[54] Intrado Reply Brief at 8 (citing to *Advanced Services Order* ¶ 27)

[55] Verizon Initial Brief at 1.

[56] *Id.* at 2.

[57] *Id.* at 2.

[58] *Id.* at 2-3.

Issue No. 1 is whether Intrado's 911/E911 service is "of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge," or is jurisdictionally based.[59] Verizon states that while it is entirely appropriate to administer a 9-1-1 system by political subdivision, it is inapt to treat the wire-center-based exchange model in the same way.[60] Verizon states that while the FTA obviated or altered many concepts, the historic notion of the single exchange and the "character [of service] ordinarily furnished by [it]," were not.[61]

Verizon states that Intrado's 911/E911 service fails to satisfy FTA § 153(47)(B) because Intrado's customers will not call Verizon's end users by using Intrado's service.[62] Verizon states that the key inquiry for Threshold Issue No. 1 is whether, according to the FTA, the telecommunications service is exchange based.[63] Verizon states that the entire premise of competitive entry in the FTA, the cost-modeling, regulation, and deregulation of services, and overall network design all center on the local wire-center (and its respective "exchange service charge"), not the governing political jurisdiction. Verizon notes that FTA § 153(47)(A) prescribes that telephone exchange service be "of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge.[64] Verizon states that "emergency services" are only a small component of local service and do not meet the statutory definition of telephone exchange service.[65]

Verizon asserts that while no reasonable person (or regulator) would accept service that excluded 9-1-1 calling access, neither would one accept a plan (at full exchange service charge[s]") that *solely* provided emergency services.[66] Verizon states that Intrado's 911/E911 service does not meet the plain language of FTA § 153(47)(A) or (B).[67] Furthermore, regardless

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[59] *Id.* at 3.

[60] *Id.* at 3.

[61] Verizon Initial Brief at 3.

[62] *Id.* at 4.

[63] *Id.* at 3.

[64] *Id.* at 4.

[65] *Id.* at 4.

[66] *Id.* at 4.

[67] Verizon Initial Brief at 4.

of the technology used, Intrado's 911/E911 is not comparable to an exchange based two-way designed network.[68] Verizon describes Intrado's 911/E911 service as a jurisdictionally designed service not designed for "exchange" of local telephone calls."[69]

C. Arbitrator's Decision.

1. Introduction

Intrado's only service offering in Texas is its 911/E911 service. Intrado's 911/E911 customers are PSAPs and other public safety agencies.[70] Intrado customers will receive 9-1-1 calls originated by end-user customers of local exchange carriers (LECs) with whom Intrado is directly or indirectly interconnected in areas where Intrado is designated the emergency services provider by the appropriate 9-1-1 entity. Intrado's PSAP and other emergency services customers will be able to conference and transfer emergency calls to other PSAPs or other public safety providers.[71] However, if Intrado's customers wish to place a call to a destination other than to another PSAP or other public safety provider, even returning an emergency call that was inadvertently disconnected, Intrado's customers must have an "administrative" telephone line from another LEC to make all such outbound calls.[72]

2. Applicable Law

FTA § 251 provides an ascending hierarchy of interconnection obligations between different types of telecommunications carriers. FTA § 251(a) imposes a general duty on all telecommunications carriers to interconnect.[73] Section 251(b) imposes additional but identical obligations on all LECs,[74] whether ILECs such as Verizon or CLECs such as Intrado, including the duty to offer nondiscriminatory resale, number portability, dialing parity, access to rights-of-

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[68] *Id.* at 4.

[69] *Id.* at 5.

[70] Petition at 5.

[71] Intrado Reply Brief at 4-5.

[72] Verizon Initial Brief at 4.

[73] 47 U.S.C. 251(a).

[74] 47 U.S.C. 251(b).

way, and reciprocal compensation for the transport and termination of telecommunications.[75] Section 251(c) imposes additional obligations on ILECs such as Verizon, including the duty to negotiate in good faith for specific purposes, such as interconnection for the transmission and routing of telephone exchange service and exchange access,[76] and subjecting them to compulsory arbitration if negotiations fail.[77]

Section 251(c) ICAs, whether arrived at by negotiations or arbitration, must be filed with and approved by the Commission.[78] Section 251(c)(2) requires ILECs to interconnect for the transmission and routing of "telephone exchange service" and "exchange access" . . . at "rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with . . . the requirements of this section and section 252."[79]

FTA § 153(47) defines telephone exchange service as:

> 1. 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
>
> 2. 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.[80]

The Arbitrators note that FTA § 153(47) is written in the disjunctive. Satisfying only one part, A or B, will qualify a service as telephone exchange service. Therefore, if Intrado's 911/E911 service satisfies either part A or B of FTA § 153(47), it is classified as telephone exchange service for purposes of FTA § 251(c)(2).

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[75] 47 U.S.C. 251(b).

[76] 47 U.S.C. 251(c)(2).

[77] 47 U.S.C. 252(b).

[78] 47 U.S.C. 252(e).

[79] 47 U.S.C. 251(c)(2).

[80] 47 U.S.C. 153(47).

3. Certification

Intrado holds an SPCOA in Texas.[81] Intrado points to its certification as proof that its 911/E911 service is telephone exchange service.[82] The FCC has said that any entity that is certified as a CLEC by the appropriate state commission is presumptively a competing provider of telephone exchange service.[83] Therefore, so long as Intrado holds a certificate from this Commission, there is a presumption that Intrado provides telephone exchange service in Texas. However, the presumption can be overcome.[84]

In the *Directory Assistance Order*, the FCC conditioned a CLEC's rights to FTA § 251 services and resources to those to which the CLEC is "entitled."[85] Further, a federal appeals court has held that the FTA definition of a LEC only applies to the extent a person actually engages in providing telephone exchange service.[86] Thus, the Arbitrators conclude that a CLEC is entitled to FTA § 251 services and resources only to the extent it actually provides telephone exchange service or exchange access. This reading of FTA § 251 is consistent with Commission precedent,[87] the 5th Circuit's interpretation of FTA § 251,[88] and with FCC Orders.[89]

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[81] *Application of Intrado, Inc. for An Amendment to its Service Provider Certificate of Operating Authority*, Docket No. 34570, Notice of Approval (Sept. 10, 2007) (removing the data-only restriction and amending certificate to reflect Intrado's authority to provide facilities-based, data, and resale telecommunications services throughout the entire State of Texas).

[82] Petition at 15.

[83] Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended, 16 FCC Rcd. 2736 at 14 (2001) (*Directory Assistance Order*).

[84] Fed. R. Evid. 301; *Emery v. Barfield*, 183 S.W. 386, 390 (Tex.Civ.App. 1916).

[85] *Directory Assistance Order* ¶ 14.

[86] *Worldcom, Inc. v. F.C.C.*, 246 F.3d 690, 694 (C.A.D.C. 2001) (explaining that even though the FTA defines the term "local exchange carrier" as any person engaged in the provision of telephone exchange service or exchange access, the definition only applies to the extent these terms apply).

[87] *Petition of Sprint Communications Company L.P. for Compulsory Arbitration under the FTA to Establish Terms and Conditions for Interconnection with Consolidated Communications of Fort Bend County*, Docket No. 31577 and *Petition of Sprint Communications Company L.P. for Compulsory Arbitration under the FTA to Establish Terms and Conditions for Interconnection with Consolidated Communications of Texas Company*, Docket No. 31578, Order No. 2 Dismissing Proceeding (May 23, 2006) (finding that the duty of an ILEC to provide interconnection for the purposes of exchanging "telephone exchange service" is solely and expressly an FTA § 251(c)(2) obligation).

[88] *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482, 487 (5th Cir. 2003) (concluding that an ILEC is only required by the Act to negotiate about those duties listed in FTA § 251(b) and (c)).

The Arbitrators find that certification as an SPCOA alone does not entitle Intrado to FTA § 251(c) services and resources from Verizon. In addition, the Arbitrators find that the presumption that Intrado, as an SPCOA holder, provides telephone exchange service is overcome by Intrado's own description of its 911/E911 service.

4. FTA § 153(47)(A) - Intercommunication

The term "intercommunication" is used in FTA § 153(47)(A), the first subparagraph of the definition of telephone exchange service, and is discussed in two FCC orders that are relied upon by both Parties.

First, in the *Advanced Services Order,* the FCC said that although "intercommunications" is not defined in the FTA or the FCC's rules, the statutory context for the term and the FCC's own precedent support a conclusion that telephone exchange services must permit "intercommunication" among subscribers within the equivalent of a local exchange area.[90] Further, the FCC said that precedent establishes that "intercommunication" refers to a service that "permits a community of interconnected customers to make calls to one another over a switched network."[91]

Second, the FCC discussed the term intercommunication in its *Directory Assistance Order.*[92] There the FCC explained that if a directory assistance provider offered call completion service to the original calling party once the requested number was located, whether the call completion service was provided using the directory assistance provider's own equipment or resale, it permitted a community of interconnected customers to make calls to one another, and was therefore "intercommunication" within the meaning of FTA § 153(47)(A).[93] The FCC stated that while directory assistance with call completion service "may not take the form of an

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[89] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499, ¶ 191 (1996) (stating that an interexchange carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an ILEC's network is not entitled to receive interconnection pursuant to FTA § 251(c)(2)). *See also Directory Assistance Order* at ¶ 21-22 (stating that not all directory assistance providers' service may satisfy the statutory requirements of telephone FTA § 153(47)).

[90] *Advanced Services Order* ¶ 24.

[91] *Id.*

[92] *Directory Assistance Order* at 16-17.

[93] *Id.* at 18.

ordinary telephone call (i.e. one initiated by LEC provision of dial tone), [it] nonetheless 'allows a local caller at his or her request to connect to another local telephone subscriber' thereby permitting a community of interconnected customers to make calls to one another."[94] The FCC also said that "[e]ngaging in call completion allows a local caller to connect to another local telephone end subscriber and, in that process, through a system of [either] owned or resold switches, enables the caller to originate and terminate a call."[95] The Arbitrators find the FCC's specific language significant. The FCC said "*offered call completion service to the original calling party,*" and "*call completion service allows a local caller to connect to another local telephone subscriber.*" When considering whether call completion service constituted telephone exchange service the FCC looked at the originating local exchange caller and the destination local change number, not the call to directory assistance. Additionally, the FCC concluded that the offering of call completion service by competing directory assistance providers constituted telephone exchange service.[96] Thus the Arbitrators conclude that except for the offering of call completion service, competing directory assistance service does not constitute telephone exchange service. For these reasons, the Arbitrators conclude that the term intercommunicating includes the concept of local subscribers being able to call one another; i.e., to originate and terminate calls to one another.

Intrado relies upon the portion of the *Directory Assistance Order* where:

> [t]he FCC reasoned that the call completion service allows a "local caller to connect to another local telephone subscriber and, in that process, through a system of either owned or resold switches, enables the caller to originate and terminate a call." Thus, while the call completion service offered by the directory assistance provider "may not take the form of an ordinary call (i.e., one initiated by LEC provision of dial tone)," [it] nonetheless "allows a local caller at his or her request to connect to another local telephone subscriber."[97]

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[94] *Id.* at 21.

[95] *Id.* at 20.

[96] *Id.* at 22.

[97] Intrado Initial Brief at 9 (citing to *Directory Assistance Order* ¶ 21).

Intrado states that this analogy applies for its 911/E911 service because its provision of services to the PSAP allows the 9-1-1 caller to connect to its requested party, i.e., the first responder answering the emergency call.[98] The Arbitrators do not agree with Intrado's interpretation.

It is not a matter of the technology involved, or whether the call is provisioned as a traditional telephone call. The FCC was clear; even if a directory assistance provider offers call completion service, if it does not provide call completion service by using its own facilities or resale, the directory assistance provider is not offering a telephone exchange service. There can be no mistake about the FCC's meaning. A competing directory assistance provider has not offered telephone exchange service to an originating directory assistance/4-1-1 caller until it has offered to complete a call to the originating caller's requested telephone number, and uses its own facilities or resale to complete the call. The Arbitrators conclude that for a competing directory assistance provider to offer telephone exchange service there must be two calls. The first call to 4-1-1 is part of the telephone exchange service that is provided by the 4-1-1 caller's LEC. The second call to another local exchange telephone number of the originating caller's choice, but completed by the directory assistance provider using its own facilities or resale, is telephone exchange service provided by the directory assistance provider to the originating caller. In essence, the directory assistance provider is switching the originating caller's second call, thus permitting the originating 4-1-1 caller to originate and terminate a local exchange call to a phone number of the originating caller's choice, even though the originating caller did not have to get dial tone a second time to originate the second call. The Arbitrators conclude that while access to directory assistance is part of telephone exchange service, directory assistance standing alone is not telephone exchange service.

A caller to Intrado's 911/E911 service make only one call, a 9-1-1 call, and reaches an emergency services first responder, whether the original answerer or a subsequent answerer if the call is "hookflash" transferred. The originating caller's 9-1-1 call is analogous to a 4-1-1 call. The telephone exchange service, provided by the originating caller's LEC, includes access to both 4-1-1 and 9-1-1. But, with Intrado's 911/E911 service, there is no second call comparable

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[98] *Id.* at 10.

to the call completion provided to the originating 4-1-1 caller by the directory assistance provider. Intrado cannot "switch" the originating caller to another number of the originating caller's choice, using Intrado's facilities or resale. If Intrado's "hookflash" supported such functionality, Intrado could transfer originating 9-1-1 callers to local exchange numbers that are not emergency services numbers. The Arbitrators see this as the determinative distinction between Intrado's 911/E911 service and directory assistance with call completion service and conclude that Intrado's 911/E911 service is not analogous to directory assistance with call completion service.

Intrado argues that its 911/E911 service supports "two-way communications" as evidence of "intercommunication."[99] But this argument is flawed and misleading. "Two-way communication" and "two-way traffic" are not the same thing. Two-way communication is equivalent to full-duplex transmission or two-way simultaneous operation, which means transmission and reception at the same time. It means the parties to a call can hear and be heard simultaneously.[100] Two-way traffic on the other hand is a type of circuit operation that provides for both originating and terminating traffic;[101] i.e. traffic can flow in either direction, inbound or outbound, on any given call.

The Arbitrators do not dispute the fact that an end-user customer that dials 9-1-1 and is connected to an Intrado 911/E911 customer can both hear and be heard. Undoubtedly, Intrado's 911/E911 service provides "two-way communications." However, for three reasons, the Arbitrators do not agree with Intrado's interpretation of the FCC's statement "the provision of individual two-way voice communication by means of a central switching complex to interconnect all subscribers within a geographic area" as somehow equating "two-way communications" with "intercommunication."[102] First, the FCC was discussing the definition of the term "exchange" not "intercommunication" when it discussed "the provision of individual two-way voice communication by means of a central switching complex to interconnect all

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[99] *Id.* at 8.

[100] NEWTON'S TELECOM DICTIONARY at 721 (17th ed. 2001) (NEWTON'S).

[101] NEWTON'S at 721.

[102] *Advanced Services Order* at 20.

subscribers within a geographic area."[103] Second, this statement discusses establishment of calls between subscribers, not the transmission capabilities of the connection once established. Third, as the Arbitrators have already discussed, the FCC was clear in the *Advanced Services Order* that "intercommunicating" refers to service that "permits a community of interconnected customers *to make calls to one another* over a switched network."[104] The Arbitrators conclude that the FCC's emphasis was on the ability to make calls to one another, i.e., two-way traffic, not on whether or not there was full-duplex transmission once a connection is established.[105]

The Arbitrators agree with Intrado's claim that the "mutual exchange" of traffic between LECs may include the use of different facilities; i.e. one facility for inbound calls and another for outbound calls.[106] But the remainder of the FCC quote Intrado relies upon states that the "mutual exchange" of traffic may be properly reflected by traffic flows of originating and terminating traffic between the various trunking configurations established between the interconnected parties.[107] Here, all of the traffic between the interconnected parties will be one-way from Verizon to Intrado. Thus, this analogy is misplaced. Additionally, the Arbitrators do not find that a requirement that Intrado's customers obtain local exchange service from another LEC satisfies FTA § 153(A).

Intrado's 911/E911 customers can be called by local exchange subscribers of other LECs, but they cannot originate local exchange calls themselves using Intrado's 911/E911 service. The only calling capability provided by Intrado's 911/E911 service is a "hookflash" capability, which provides conferencing and transfer capabilities within the 9-1-1 network.[108] The Arbitrators find that Intrado's "hookflash" conference and transfer capability, its only call origination capability, is not similar or comparable to directory assistance with call completion service. Intrado's "hookflash" capability merely extends or completes the original 9-1-1 call. This finding is

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[103] *Advanced Services Order* ¶ 20.

[104] *Advanced Services Order* ¶ 23.

[105] NEWTON'S at 296 (supports simultaneous two-way communication).

[106] Intrado Initial Brief at 8.

[107] *Id.* (citing *to Advanced Services Order* ¶ 20-21, 30 (discussing "intercommunication" as the hallmark of telephone exchange service)).

[108] Intrado Reply Brief at 8.

consistent with the fact that Intrado's 911/E911 service customers must obtain telephone exchange service from another LEC to make calls to non-9-1-1/emergency services customers of other LECs with which Intrado is interconnected either directly or indirectly.[109] For these reasons, the Arbitrators find that Intrado's 911/E911 service falls short of providing "intercommunication" as required by FTA § 153(47)(A).

5. FTA § 153(47)(B) -Comparable Origination and Termination.

If a service does not satisfy FTA § 153(47)(A), it may still be classified as telephone exchange service if it satisfies FTA § 153(47)(B), which provides that telephone exchange service is "comparable service provided through the system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."[110] The FCC said that the term "comparable," though not defined in the FTA, is generally understood to mean "having enough characteristics and qualities to make comparison appropriate."[111] Specifically and consistent with the Arbitrators analysis in part (4) above, the FCC has determined that directory assistance with call completion service is a "comparable service" for purposes of this statute.[112] The FCC explained that to be "'comparable service,' a provider must allow a calling party the ability, 'through the system of switches, transmission equipment, or other facilities (or combination thereof)' to 'originate and terminate a telecommunications service.'"[113] The FCC said that "allowing the calling party the ability . . . to connect to another local telephone subscriber . . . enables the caller to originate and terminate a call."[114] Thus, for the FCC, "comparable," for purposes FTA § 153(47)(B), means that a subscriber of local exchange service must have the ability to originate and terminate calls to any other subscriber of local exchange service in the first subscriber's local exchange.

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[109] *IXC, COA, SPCOA and Other Non-Dominant Carriers' Tariffs and Price Lists*, Docket No. 27385, Intrado Texas Rate Sheet No. 1, Section 5, Original Page 9 at Section 5.2.9D (June 10, 2008).

[110] FTA § 153(47)(B).

[111] *Advanced Services Order* ¶ 29.

[112] *Directory Assistance Order* at ¶ 20.

[113] *Id.*

[114] *Id.* at 21.

Further expanding on the term "comparable," the FCC explained that not all call completion service constitutes telephone exchange service.[115] If a directory assistance provider simply hands the call off to another carrier to complete the call, it is not a provider of telephone exchange service.[116]

The FCC also said that the word "comparable" in FTA § 153(47)(B) means that services described therein share some of the same characteristics and qualities as the services described in FTA § 153(47)(A), including the key component, "intercommunicating."[117] Again, the FCC made it clear that "intercommunicating" refers to a service that provides both "origination" and "termination" because it "permits a community of interconnected customers to make calls to one another over a switched network."[118] The Arbitrators have concluded that the words "make calls to one another" require a telephone exchange service to be capable of terminating calls and originating calls in some form, even if it is not in the form of traditional dial tone services. Thus, to be comparable, Intrado's 911/E911 service must provide a similar capability, but it does not.

The Arbitrators find multiple distinctions between the FCC's explanations of "comparable" in the *Directory Assistance Order* and Intrado's 911/E911 service. First, Intrado's 911/E911 service is not local exchange service; it is solely an emergency service that local exchange customers can access. Second, Intrado's 911/E911 customers cannot originate and terminate calls in their local exchange to and from local exchange customers of any LEC. Finally, Intrado's 911/E911 service's only "originating" calling capability, its "hookflash" capability, only extends the originating 9-1-1 call within the 9-1-1 network. For these reasons, the Arbitrators find that Intrado's 911/E911 service falls short of being "comparable" or of providing "origination" as required by FTA § 153(47)(B).

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[115] *Id.* at 22.

[116] *Id.*

[117] *Advanced Services Order* ¶ 30.

[118] *Id.* at ¶ 23.

6. FTA § 153(47)(A) - "[w]ithin 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."

The Arbitrators do not agree with Intrado's analogy that 9-1-1 fees collected for maintaining a 9-1-1 network are equivalent to or serve the same purposes as EAS and ELCS fees. 9-1-1 fees are mandatory and are assessed upon all customers, including wireline[119] and wireless.[120] 9-1-1 fees pay for the entire wireline 9-1-1 network; including but not limited to trunks, PSAPs, and selective routers. The wireline 9-1-1 network is interconnected with but separate from the PSTN.

On the other hand, EAS and ELCS fees, some optional and some mandatory, only cover the additional cost of traffic that would otherwise be covered by toll and/or access fees. Traffic covered by EAS and ELCS fees is traffic that would otherwise be covered by toll and/or access fees. Additionally, neither EAS nor ELCS are a service provided over a network that is interconnected but separate from the PSTN. EAS and ELCS are merely different ways to bill for services provided over the PSTN. Intrado's 911/E911 service is not analogous to EAS or ELCS.

Further, the Arbitrators disagree with Intrado that its fee is an exchange service charge. The FCC did not say that any fee charged by a local exchange carrier is an exchange service charge. The FCC said that any fee charged for local exchange service is an exchange service charge.[121] Thus, the Arbitrators conclude that because Intrado's 911/E911 is not telephone exchange service, its fee is not an exchange service charge.

Lastly, the Arbitrators agree with Intrado that 9-1-1 services that are classified as telephone exchange service are fundamentally different in nature than other telephone exchange services, and consistent with the FCC,[122] find that if Intrado's 911/E911 service is ultimately classified as telephone exchange service, it would not be required to operate entirely within Verizon's exchange boundaries.

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[119] TEX. HEALTH & SAFETY CODE § 771.071.

[120] TEX. HEALTH & SAFETY CODE § 771.0711.

[121] *Directory Assistance Order* ¶ 19.

[122] *Forbearance Order* at 51.

7. Precedent.

Intrado claims that the Commission has already determined that Intrado's 911/E911 service has the same qualities as other services deemed to be telephone exchange service; i.e. there is applicable Commission precedent.[123] Intrado quotes the Commission as saying that Intrado's service would "both transmit and route 9-1-1 calls, which calls are telephone exchange service and/or exchange access."[124] However, for several reasons, the Arbitrators do not agree with Intrado's reading of the Commission's precedent, and even if Intrado's interpretation of this Commission's decision in Docket No. 23378 were correct, the undersigned Arbitrators do not reach the same result as the arbitrators in that docket.

First, contrary to Intrado's assertion, the issue in Docket No. 23378 with Intrado's predecessor company was not whether or not its service was telephone exchange service but whether its predecessor was a "telecommunications carrier" and its service a "telecommunications service."[125] Therefore, the earlier proceeding dealt with much more basic issues. The issue of whether or not Intrado's 911/E911 service is telephone exchange service was neither analyzed nor decided.

Second, the arbitrators in the previous proceeding stated that the inbound calls delivered to the PSAPs were telephone exchange service or exchange access, not that Intrado's service standing alone was telephone exchange service.[126] Such a finding is consistent with the inclusion of access to 9-1-1 service as a component part of basic local telecommunications service.[127] Therefore, the Arbitrators conclude that the arbitrators in the earlier proceeding were looking at the end-to-end 9-1-1 call, not just 9-1-1 service as a stand-alone product, which is not the same analysis as the Arbitrators make herein.

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[123] Intrado Reply Brief at 6.

[124] *Id.* at 7 (citing to 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, Docket No. 23378, Order No. 8 at 11-12 (Jan. 4, 2002) (*SCC Order*).

[125] *SCC Order* at 3.

[126] *Id.* at 11.

[127] PURA § 51.002(1)(E).

Third, consistent with the Arbitrators' discussion of FTA § 153(47)(B) and the terms "comparable," "origination," and "termination" in part (5) above, the inbound caller to Intrado's 911/E911 service will have originated and terminated a call, thus utilizing telephone exchange service. However, Intrado's 911/E911 service standing alone is not telephone exchange service.

The arbitrators in Docket No. 23378 found that AT&T was obligated to provide interconnection to Intrado for purposes of terminating 9-1-1 calls,[128] and the undersigned Arbitrators agree. However, the undersigned Arbitrators find that Intrado is not entitled to FTA § 251(c) interconnection because Intrado's 911/E911 service is not telephone exchange service. Therefore, Intrado's is entitled to interconnect with Verizon pursuant only to FTA § 251(a) and (b), through a commercial agreement, not through an ICA.

Finally, because Intrado's predecessor's SPCOA was data-only,[129] the Arbitrators find that the two arbitrations are factually distinguishable and any precedent established in the prior proceeding is not directly applicable to this proceeding because the services at issue are different. As a result, the Arbitrators do not find Commission precedent applies.

8. Texas 9-1-1 Entities

This decision does not abrogate Commission rules relating to 9-1-1 or E9-1-1 services and does not impinge on any Texas 9-1-1 entities' right to designate any Texas certificated telecommunications utility as their wireline E9-1-1 network provider. If any of the Texas 9-1-1 entities wishes to designate Intrado as its wireline E9-1-1 network provider, it may do so.[130] However, the interconnection between Intrado and Verizon will be governed by FTA § 251(a) and (b), but not (c). In addition, the Arbitrators note that a CLEC that provides "telephone

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[128] *SCC Order* at 11-12.

[129] *Application of Intrado, Inc. for Amendment to its Service Provider Certificate of Operating Authority*, Docket No. 34570, Application at 6 (July 27, 2007) (amending SPCOA from being a data-only provider to being a facilities-based, resale only, data only, or a combination provider, yet still indicating that the only telecommunications services that will be offered in Texas will be 9-1-1 selective routing, switching, aggregation, and transport).

[130] Joint Statement of Position on Threshold Issues of the Texas Commission on State Emergency Communications, the Texas 9-1-1 Alliance, and the Municipal Emergency Communication Districts Association at 4 (Oct. 31, 2008).

exchange service" or "exchange access" and that also provides a competitive 9-1-1 network would have the right to compel Verizon to arbitrate an ICA pursuant to FTA § 252(b).

9. Emergency service interconnection rights

The Arbitrators do not agree with Intrado's assertion that for the purpose of providing competitive 911/E911 services, interconnection rights differ from traditional interconnection arrangements.[131] Except for where the FCC has made some concessions based on the nature of emergency services, such as relaxed exchange boundaries,[132] there is nothing in the FTA or FCC precedent that authorizes the Commission to impose interconnection obligations on any ILEC simply because the CLEC's service is an emergency service. Intrado claims that interconnection between carriers for the purpose of each other's customers calling the other's residential or business customers may indeed be different than interconnection that ensures 9-1-1 callers reach the right PSAP when they have an emergency and need help.[133] The Arbitrators agree with this statement. The Commission's current interconnection rule contains heightened requirements related to provisioning of 9-1-1 service.[134] However, the fact that there are heightened interconnection requirements between carriers for the exchange of 9-1-1 traffic as compared to interconnection requirements between carriers for the exchange of non-9-1-1 traffic is not relevant to the instant facts. Intrado is not seeking to interconnect with Verizon as a carrier whose customers will dial 9-1-1 and be routed to Verizon's 9-1-1 services or as a carrier whose customers will exchange calls with Verizon's customers. Intrado seeks arbitration of an ICA with Verizon for one purpose, to establish a competitive 9-1-1 network.

V. Conclusion

The authority of this Commission to compel Verizon to arbitrate a FTA § 251(c) ICA with Intrado is limited by the terms of the FTA. The Arbitrators find nothing in the FTA that

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[131] *Id.* at 3.

[132] *Forbearance Order* at 51.

[133] Joint Statement of Position on Threshold Issues of the Texas Commission on State Emergency Communications, the Texas 9-1-1 Alliance, and the Municipal Emergency Communication Districts Association at 3.

[134] P.U.C. SUBST. R. 26.272(e).

authorizes them to compel Verizon to arbitrate an FTA § 251(c) ICA with Intrado or any other company that does not provide "telephone exchange service" or "exchange access."[135] Intrado admits that it does not provide "exchange access."[136] Therefore, the sole issue for purposes of Threshold Issue No. 1 is whether or not Intrado's 911/E911 is "telephone exchange service." The Arbitrators have concluded that Intrado's 911/E911 service not telephone exchange service and therefore deny the relief requested in Intrado's petition pursuant to P.U.C. PROC. R. 21.69.[137]

The Arbitrators make no comment on the value of establishing a competitive 9-1-1 network or the fact that Intrado's 911/E911 service is IP based. These factors do not impact the Commission's authority or the Arbitrators' decision. The Arbitrators do note, however, that a CLEC that provides "telephone exchange service" or "exchange access" and that also provides a competitive 9-1-1 network would have the right to compel Verizon to arbitrate an FTA § 251(c) ICA pursuant to FTA § 252(b).

Because the Arbitrators' ruling on Threshold Issue No. 1 is dispositive of this matter, the Arbitrators do not address any of the other threshold issues at this time. However, if this order is overturned, the Arbitrators will rule on the remaining threshold issues at that time. Pursuant to P.U.C. PROC. R. 21.69(e) and consistent with P.U.C. PROC. R. 21.75(b)(2), a motion for reconsideration of this order shall be filed within 20 days of the issuance of this order and a response to a motion for reconsideration shall be filed within ten days of the filing of the motion.

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[135] 47 U.S.C. 251(c).

[136] Intrado Initial Brief at 3, fn 5.

[137] The Parties agreed to brief Threshold Issue No. 1 at the October 8, 2008 prehearing conference and Verizon's initial brief on that issue was effectively a motion for summary decision, to which Intrado responded in its reply brief.

SIGNED AT AUSTIN, TEXAS the 23rd day of November 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

Susan E. Goodson by permission EK
SUSAN E. GOODSON, ARBITRATOR

Liz Kayser
LIZ KAYSER, ARBITRATOR

VI. Attachment 1: Glossary

ALI

Automatic Location Identification. Information provided to a 9-1-1 database that routes calls to the correct emergency services provider for the particular location.

CLEC

Competitive Local Exchange Carrier. A term coined for the deregulated, competitive telecommunications environment envisioned by the Telecommunications Act of 1996. CLECs compete on a selective basis for local exchange service, as well as long distance, international, internet access, and entertainment. They build or rebuild their own local loops, wired or wireless, and/or they lease local loops from incumbent local exchange carriers (ILECs) at wholesale rates for resale to customers.

DPL

Decision Point List. List of issues to be decided by arbitrators in an FTA § 252 arbitration.

EAS

Extended Area Service.

ELCS

Expanded Local Calling Service.

FCC

Federal Communications Commission.

FTA

Federal Telecommunications Act. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C).

ILEC

Incumbent Local Exchange Carrier. An ILEC is a local telephone company in the United States that was in existence at the time of the divesture of AT&T.

ICA

Interconnection Agreement. Commission-approved FTA interconnection agreement, not a commercial agreement.

IP

Internet Protocol.

IXC

Interexchange Carrier. Facilities-based Inter-LATA long distance carriers.

LATA

Local Access and Transport Area. A geographic area established for the provision and administration of communications service. It encompasses one or more exchanges. The area within which an ILEC was permitted to provide local and toll services before obtaining FTA § 271 relief.

LEC

Local Exchange Carrier.

PSAP

Public Safety Answering Point.

PSTN

Public Switched Telephone Network.

SPCOA

Service Provider Certificate of Operating Authority.