

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: November 14, 2008

CASE NO. 08-0298-T-PC (REOPENED)

INTRADO COMMUNICATIONS, INC. and
VERIZON WEST VIRGINIA INC.,
Petition for Arbitration filed pursuant
to §252(b) of 47 U.S.C. and 150 C.S.R.
6.15.5.

ARBITRATION AWARD

PROCEDURE

On March 5, 2008, Intrado Communications, Inc. ("Intrado"), filed a petition for compulsory arbitration of open issues relating to negotiation of an interconnection agreement with Verizon West Virginia Inc. ("Verizon"), pursuant to 47 U.S.C. §252(b).¹

On April 3, 2008, Commission Staff ("Staff") filed a Memorandum stating that the parties reached an agreement (1) to negotiate for an additional forty-five days, (2) to involve Staff in the negotiations if issues were not resolved by the twenty-third day, and (3) to file a joint petition for arbitration if issues remain unresolved at the end of the forty-five day period. Staff also stated that the parties agreed to report weekly to the Commission on the progress of the negotiations.

On April 8, 2008, Intrado and Verizon filed a letter stating that they supported Staff's recommendation to hold this proceeding in abeyance for forty-five days to give the parties the opportunity to participate in monitored negotiations with Staff.

On June 10, 2008, Staff filed its final memorandum recommending dismissal of this matter. Staff stated that it had not been involved in negotiations between Intrado and Verizon and that Intrado had not communicated with Staff since the Commission's April 9, 2008 Order.

¹47 U.S.C. §252(b) provides, in part, that state commissions may arbitrate disputes involving interconnection agreements between certain telecommunications carriers upon petition by one of the parties to the negotiation.

On June 12, 2008, the Commission dismissed this matter finding that Intrado failed to provide documentation concerning unresolved issues and that a petition for arbitration was not properly before the Commission.

On June 23, 2008, Intrado filed a Petition to Reconsider requesting that the Commission reinstate the arbitration petition and establish a procedural schedule with a decision deadline of September 12, 2008. Verizon responded on July 3, 2008, in opposition to Intrado's Petition to Reconsider. Staff also argued against reopening the proceeding. See, Staff's July 7, 2008 Response. Intrado disputed the assertions of both Staff and Verizon. See, Intrado's July 25, 2008 Reply.

By Commission Order entered on August 1, 2008, the Commission granted Intrado's petition for reconsideration, appointed Chief Administrative Law Judge Melissa Marland, Esquire, or her designee, as the arbitrator in this matter, tolled the final decision deadline in this matter until September 12, 2008, and established procedural parameters. Among other things, the Commission Order required that the arbitrator issue the arbitration award on or before August 29, 2008. Intrado was ordered to fully answer all unanswered data requests propounded by Verizon within seven (7) days of the receipt of the Commission Order. Any motion requesting that the Commission reject the arbitrator's award under 47 U.S.C. §252(e) was to be filed on or before September 2, 2008.

On August 7, 2008, Intrado and Verizon filed a joint motion in this matter, requesting that the Commission extend the decision due date established in its Order of August 1, 2008. According to the joint motion, Intrado and Verizon have agreed to revise the renegotiation request date to re-set the statutory time frame for an arbitration decision in West Virginia until December 12, 2008. Accordingly, they proposed, inter alia, that hearings be held on September 24, 2008, continuing on September 25 and 26, 2008, if necessary; that briefs be filed on or before October 17, 2008; that the ALJ's proposed arbitration award be issued on or before November 7, 2008; that any exceptions to the arbitration award be filed on or before November 14, 2008; and that the Commission issue its decision on or before December 12, 2008. The parties stated that their proposed schedule would insure that the outstanding disputes would be expeditiously resolved while giving the parties, the Administrative Law Judge and the Commission adequate time to address the unresolved issues.

By Commission Order entered on August 12, 2008, the Joint Motion to Extend the Decision Due Date was granted and the Commission tolled the final decision deadline in this matter until December 12, 2008. The arbitrator was directed to establish a procedure schedule and the parties were directed to contact the arbitrator within ten (10) days of the entry of the Commission's Order and provide any information needed by the arbitrator to facilitate scheduling. The arbitrator was directed to issue the arbitration award on or before November 7, 2008. Intrado was directed to fully answer all unanswered Verizon data requests on or before August 12, 2008, and any motion requesting that the Commission reject the arbitrator's ruling was directed to be filed on or before November 14, 2008.

Also on August 12, 2008, Intrado filed applications for the pro hac vice admission of Angela Collins, Esquire, Rebecca Ballesteros, Esquire, and Cherie Kiser, Esquire, to practice before the Public Service Commission in this matter. The applications were filed pursuant to Rule 8.0 of the Rules of Admission to the Practice of Law in the State of West Virginia (Rules for Admission) by E. Dandridge McDonald, of the law firm of Steptoe and Johnson PLLC, Intrado's local counsel. The affidavits with respect to each of the three out-of-state attorneys also indicated that Mr. McDonald had forwarded a copy of the three applications together with the required \$250 fee for each application to the West Virginia State Bar.

On August 13, 2008, Intrado filed a letter indicating that it had filed its responses to Verizon's discovery requests on August 12, 2008.

By Procedural Order entered on August 19, 2008, a procedural schedule was established for the processing and resolution of this case. Among other things, this matter was set for hearing to be held on September 24, 2008, at 10:00 a.m., at the Public Service Commission Building, in Charleston, West Virginia, and to continue at the same location and at the same time on September 25 and September 26, 2008, if necessary. A schedule for the filing of the transcript of the hearing, initial briefs and reply briefs was also established. Additionally, the motions for the admission pro hac vice to practice before the Commission for Angela Collins, Esquire, Rebecca Ballesteros, Esquire, and Cherie Kiser, Esquire, were granted.

On September 9, 2008, Verizon filed a motion for leave to file and present panel testimony.

On September 16, 2008, Intrado filed a response which did not object to Verizon's request to file and present panel testimony and stated that, in light of Verizon's request, it also intended to use the panel format for some of its rebuttal testimony.

On September 19, 2008, Intrado and Verizon filed a Joint Motion for a modification of the procedural schedule and for an extension of the Administrative Law Judge's decision due date, as a result of a sudden illness in the family of Verizon's lead trial counsel. The parties had reached an agreement regarding a revised schedule, calling for hearing to be held on October 2, 2008, and extending by one week, each, the dates for filing initial briefs and reply briefs and the dates for the issuance of the ALJ recommendation, the filing of exceptions and the issuance of a Commission decision.

By Commission Order entered on September 22, 2008, the Commission granted the motion to extend the date for the issuance of the ALJ recommendation from November 7, 2008, to November 14, 2008, and the date for the issuance of the Commission decision from December 12, 2008, to December 19, 2008.

By Procedural Order issued on September 22, 2008, the procedural schedule established by the Procedural Order of August 19, 2008, including the hearing date of September 24, 2008, was cancelled. The

revised procedural schedule requested by the parties, including the hearing date of October 2, 2008, was adopted.

On September 30, 2008, Verizon filed a notice of witness substitution, substituting Maureen Napolitano for Kathleen Cerrati on its witness panel.

The hearing set for October 2, 2008, was held as scheduled, with Intrado represented by E. Dandridge McDonald, Cherie R. Kiser and Rebecca Ballesteros, Esqs.; Verizon represented by Joseph J. Starsick and Darrell Townsley, Esqs.; and Commission Staff represented by Staff Attorney C. Terry Owen, Esq. At the beginning of the hearing, the undersigned granted the motion for pro hac vice admission of Mr. Townsley upon the motion of Mr. Starsick. Intrado presented the testimony of three witnesses and introduced six exhibits into evidence, including packets consisting of the testimony and exhibits of its witnesses Thomas Hicks, Carey Spence-Lenss and Cindy Clugy, the disputed issues matrix and draft interconnection agreement, and two cross-examination exhibits. Verizon presented the testimony of three witnesses, Maureen Napolitano, Kathy Buckley and Peter D'Amico and introduced seven exhibits into evidence, including the direct and rebuttal testimony and testimony sponsor detail sheets for its witness panel, a rebuttal exhibit and two cross-examination exhibits. Commission Staff presented no testimony or witnesses, although the Staff Attorney cross-examined some of the witnesses of the other parties. At the conclusion of hearing on October 2, 2008, this matter was submitted for an arbitration award, pursuant to the procedural schedule established in the Order of September 22, 2008.

On October 6, 2008, the transcript of the hearing held on October 2, 2008, was filed, consisting of 224 pages and a reporter's certificate.

On October 24 and 31, 2008, Intrado and Verizon each filed initial and reply briefs in accordance with the established schedule, all of which have been considered by the undersigned in the course of rendering this decision.

On November 10, 2008, the West Virginia Enhanced 9-1-1 Council (Council) filed a letter in this matter, stating that it had been informed of the case and had discussed the case at a recent meeting. It specifically referred to Intrado's request to perform 911 call deliver using what the Council referred to as "line call attribution." The Council expressed concern about the reliability and effectiveness of this method of emergency call delivery. However, the Council also stated that it had no desire or intention to limit competition among the companies or to limit the free market in providing a more efficient or less costly product. It asked that its concerns with that particular method of 911 call delivery be included in the file.

On November 12, 2008, Intrado filed a response to the Council's letter and reiterated its position that it was not asking the Commission to rule that 911 call delivery should use line call attribution.

On November 13, 2008, Verizon filed a response to the Council's letter, reiterating its position in this proceeding regarding line attribute routing.

The Council's letter and Intrado's and Verizon's responses thereto have not been considered in the determination of the arbitration award granted herein.

BACKGROUND

Basic 911/E911 Architecture in West Virginia

Emergency telephone service (911) and enhanced emergency telephone service (E911)² allow a caller to reach emergency services quickly in the event of fires, accidents, floods, etc., by dialing the three-digit emergency number of 9-1-1 to reach a public safety answering point (PSAP), also referred to as a 911 center or emergency services center. In basic 911 service, usually the PSAP receives only the voice call. In E911 service, the PSAP receives the call plus the caller's telephone number through a feature known as ANI (automatic number identification). Additionally, the PSAP receives ALI (automatic location identification), via a special ALI database which gives the PSAP the actual location of the caller, even if the caller cannot communicate or the call is disconnected for some reason. (Verizon Ex. 1.0, pp. 12-14).

Currently, 911/E911 service to PSAPs in West Virginia is provided by the two largest incumbent local exchange carriers (ILECs)³ operating in West Virginia, Verizon and Frontier. Verizon serves the 41 PSAPs in Verizon's 45-county West Virginia service territory and is providing some 911/E911 service in Frontier's territory. (Verizon Ex. 1.0, p. 12; Tr., pp. 159-161).

For Verizon's own end user customers who are trying to reach their PSAP, the 911 call goes from the end office serving Verizon's end user to one of the two selective routers⁴ in the end user's LATA (local access and

²For the purposes of this decision, any general reference to either 911 or E911 service encompasses both types of service.

³An ILEC is the local exchange carrier who provided telephone exchange service to a particular area on February 8, 1996, or its successor. (47 U.S.C. §51(h)).

⁴A selective router is a mated pair of tandem switches which send 911 calls to the appropriate PSAP. Verizon has two selective routers in each LATA, or six throughout its West Virginia service territory. A selective router is basically an end office switch with the added features that allow it to transmit 911 calls to the correct PSAP. Basically, when a 911 call reaches the selective router, the selective router looks up the customer's telephone number and predetermined emergency service number, which tell it which trunk route the call needs to take to get to the proper PSAP. (Tr., pp. 190-191, 215-216; Verizon Ex. 1.0, pp. 12-13).

transport area).⁵ (Verizon Ex. 1.0, Attachment 1). There are three LATAs covering West Virginia, the Charleston LATA, the Clarksburg LATA and the Hagerstown, Maryland LATA. There is also a small Independent Market Area covering part of Mercer and McDowell Counties. (Verizon Cross-Examination Ex. 2). The selective routers in each LATA are not interconnected. (Tr., p. 160).

The principal purpose of TA96 was to open the nation's telecommunications markets to competition. As a result, hundreds, if not thousands, of competitive local exchange carriers (CLECs) are now operating nationwide, including many in West Virginia. The CLECs compete with the ILECs to provide various types of telecommunication services in a given area, including local, long distance and data transmission. In order to provide for the termination of its customers' calls to destinations not served by it, a CLEC enters into interconnection agreements with the different ILECs and CLECs that also serve in a particular geographic area. The interconnection agreements cover all aspects of the exchange of traffic and include the point or points of interconnection (POIs) between the two networks, technical requirements, prices/rates and the rights and obligations of the two parties. (Intrado Initial Brief, pp. 3-4, 6-7; 47 U.S.C. §251).

All CLECS are required by TA96 to provide 911/E911 service to their customers. (Tr., p. 176). Accordingly, the interconnection agreements also cover the handling of the CLEC customers' 911 calls. With respect to 911 calls, the interconnection agreement that the CLECs enter into with Verizon in West Virginia requires that the points of interconnection be the two selective routers in the CLEC's LATA. If the CLEC serves on a statewide or close to statewide basis, it connects at all six of Verizon's selective routers. The CLEC constructs trunks directly to the selective routers from its network. When a 911 call from a CLEC customer reaches Verizon's selective router, the same process occurs as it does for a call from Verizon's own end users. The selective router looks up the caller's number and emergency service number and routes the call to the correct PSAP. (Verizon Ex. 1.0, pp. 14-15; Tr., pp. 168-170).

⁵As a result of the 1982 Modified Final Judgment breaking up AT&T and separating the "Bell Companies" into the Regional Bell Operating Companies (RBOCs), the nation was divided into LATAs. RBOCs (including the West Virginia AT&T affiliate, Verizon, fka Bell Atlantic-West Virginia, fka The Chesapeake and Potomac Telephone Company of West Virginia), could only provide local service within LATAs (intraLATA). As a result of the Telecommunications Act of 1996 (TA96), these companies were allowed to provide long distance or interLATA service (service between two LATAs), if they met certain conditions established in §271 of TA96. Verizon filed a §271 petition with the Commission in 2002 and, in its consultative role pursuant to §271, the Commission concluded that Verizon was in compliance with the 14-point checklist in §271 and submitted its Commission Order and Consultative Report to the FCC. (Case No. 02-0809-T-PC, Commission Order and Consultative Report, January 9, 2003). The FCC granted Verizon's §271 application for Maryland, Washington, D.C., and West Virginia later in 2003. Application by Verizon..., 18 FCC Rcd 5212 (2003)).

At various points in West Virginia, Verizon's network is in close proximity or adjacent to the network of another ILEC and they may need to exchange traffic to allow the completion of 911 calls to the correct PSAPs. Verizon entered into agreements with the other ILECs in West Virginia prior to TA96 for this exchange of traffic, including 911 calls. These agreements are called "meet-point arrangements." Under a meet-point arrangement, Verizon and the other ILEC connect to each other's network at a point where their networks meet or are in close proximity to each other. If any facilities need to be constructed by either carrier to reach the meet-point, each carrier bears the responsibility for the construction of its own facilities. However, those arrangements entail little, if any, construction because the meet-point was chosen specifically for the proximity of the two networks to each other. (Verizon Ex. 1.0, p. 14; Tr., p. 167).

Case Background

Several provisions of TA96 address the interconnection of ILEC and CLEC networks. Section 251 of TA96 provides, in part, as follows:

SEC. 251. [47 U.S.C. 251] INTERCONNECTION.

(a) 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; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS.-Each local exchange carrier has the following duties:

(1) RESALE.-The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) NUMBER PORTABILITY.-The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) DIALING PARITY.-The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) ACCESS TO RIGHTS-OF-WAY.-The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224.

(5) RECIPROCAL COMPENSATION.-The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.-In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE.-The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) in subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) INTERCONNECTION.-The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

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Section 252 of TA96 establishes the process by which state commissions may arbitrate requests for interconnection. Section 252(c) provides as follows:

(c) STANDARDS FOR ARBITRATION.-In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall-

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Section 252(e) provides, in part, as follows:

(e) APPROVAL BY STATE COMMISSION.-

(1) APPROVAL REQUIRED.-Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) GROUNDS FOR REJECTION.-The State commission may only reject-

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that-

(I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

Finally, Section 253(b) provides as follows:

(b) STATE REGULATORY AUTHORITY.-Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, 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.

Additionally, Rule 15.3.a. of the Commission's Rules and Regulations for the Government of Telephone Utilities (Telephone Rules) (150 CSR 6) provides that any telecommunications carrier may request interconnection with an ILEC in accordance with Sections 251(b) and 251(c) of TA96.

Intrado Communications has been certificated as a CLEC in West Virginia⁶, although it isn't providing any service in the State at this time. (Intrado Ex. 1, Panel Rebuttal, p. 4; Tr., pp. 16, 21). Prior to providing service, Intrado must enter into interconnection agreements with the necessary carriers and file tariffs containing its rates and charges with the Commission. (Final Order, Case No. 06-1892-T-CN). Currently, Intrado is only attempting to provide competitive 911/E911 services in West Virginia, by which it means that it wants to compete with Verizon to provide service to the PSAPs. Intrado will not be serving end users under this agreement. (Verizon Ex. 1.0, p. 31). In order to provide service, Intrado requested an interconnection agreement with Verizon, pursuant to Section 251(c) of TA96. Ultimately, Intrado and Verizon could not agree on an agreement and Intrado filed the petition that generated this proceeding.

In its petition for arbitration filed on March 5, 2008, Intrado presented 44 issues for arbitration. In its response to the petition, Verizon added 3 additional issues. After further negotiations, Intrado and Verizon resolved all but 17 issues. Those issues were presented to

⁶(Intrado Communications, Inc., Case No. 06-1892-T-CN, Commission Order, Final March 28, 2007).

the Commission in this proceeding in a Disputed Issues Matrix (Matrix) which was received in evidence as Intrado Exhibit 4. An interconnection agreement, containing all of the agreed-upon provisions and designating Intrado's and Verizon's respective proposals for the disputed issues, is also part of Intrado Exhibit 4. The issues in the Matrix are keyed to the specific provisions in the interconnection agreement to which they apply, to the extent possible. However, the Matrix specifically notes that, while the parties tried to list all of the affected provisions of the interconnection agreement with each issue, there may be other provisions which were missed by the parties that are also affected by a particular issue. (Intrado Exhibit 4, Matrix, p. 1).

PRELIMINARY JURISDICTIONAL ISSUE

While not raised directly by Verizon, Verizon referenced on several occasions in its testimony and its initial and reply briefs the issue of whether Intrado Communications is even entitled to an interconnection agreement, or to file a petition for arbitration for an interconnection agreement, regarding only 911/E911 services. It noted that the issue was currently pending before the Federal Communications Commission (FCC)⁷ and several state commissions. Verizon stated that it, essentially, had waived the issue of jurisdiction and had agreed to enter into a negotiated interconnection agreement with Intrado, as it would any other CLEC. (Verizon Ex. 1.0, p. 9; Verizon Initial Brief, p. 4; Verizon Reply Brief, pp. 2-5 & Exhibits A-D).

Obviously, jurisdiction is a matter which can be raised at any time and which can be raised by a commission on its own. A fair reading of the applicable provisions of the Telecommunications Act of 1996 and the FCC's rules promulgated in response to TA96 would indicate that Intrado's right to request interconnection solely for the provision of 911/E911 service pursuant to Section 251(c) may be questionable. Section 251(c)(2)(A) provides that ILECs have an obligation to provide interconnection with a requesting telecommunications carrier for the transmission and routing of telephone exchange service and exchange access. The FCC's supporting rule, 47 CFR §51.305(b) states, as follows:

- (b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

⁷For purposes of this decision, when the undersigned uses the term "Commission" in discussion, she is referring to the Public Service Commission of West Virginia. However, in TA96, the term "Commission" refers to the FCC. State regulatory authorities, including designated arbitrators, are referred to as "state commissions."

Under Intrado's proposal, providing service only to PSAPs, Intrado appears to be seeking solely to originate its interexchange traffic on an ILEC's (Verizon's) network.

However, since the issue is pending before the FCC; because Verizon did essentially waive that issue by entering into interconnection agreement negotiations with Intrado; and because the issue was not squarely presented to the parties in a fashion that would have allowed Intrado to recognize that it needed to file responsive testimony and briefing on the issue for the undersigned, she will not address the issue of Intrado's right to request interconnection or arbitration solely for its proposed 911/E911 service to PSAPs.

DISPUTED ISSUES

As noted previously in this Order, there are seventeen disputed issues still remaining for resolution. The issues has been designated at all points throughout the prepared testimony, in the live testimony at hearing and in the Disputed Issues Matrix using the numbering that those issues had in the original list of over fifty disputed issues. Accordingly, that numbering will be retained in this decision. Therefore, the first issue to be addressed will be designated as Issue No. 3. The specific issues to be addressed in this matter are Issues 3, 4, 6, 9, 12, 13, 14, 15, 34, 35, 36, 46, 47, 49, 52, 53 and 54. Both Intrado and Verizon have acknowledged at numerous points that the determination of Issue No. 3 will impact or be dispositive of several subsequent issues, although they will still require discussion and an award.

ISSUE NO. 3

Where should the points of interconnection be located and what terms and conditions should apply with regard to interconnection and transport of traffic?

In its proposed language, Intrado is demanding that, when Intrado is the E911 service provider for the PSAP, Verizon be required to construct facilities from Verizon's network to Intrado's two selective routers on Intrado's network, so that Verizon end users who are served by an Intrado PSAP can reach that PSAP when dialing 911. (Intrado Ex. 1, Hicks Direct, pp. 9-10; Tr. pp. 15-16, 22, 57). At this point, Intrado has not designated specific locations for its selective routers in West Virginia, although it represented that there would be a minimum of two selective routers located in West Virginia. (Intrado Ex. 1, Hicks Direct, p. 14; Tr. pp. 16-18). Intrado also indicated that, if it were more convenient, for Verizon or any other ILEC or CLEC who needed to transport 911 calls to an Intrado-served PSAP, any of Intrado's selective routers located outside the state could also be used, noting that it had at least two selective routers in Ohio, Pennsylvania and Virginia already in service. (Tr. pp. 23, 106, 109-110).

Intrado argues that Verizon should be required to transport 911/E911 calls to Intrado's selective routers where Intrado serves the PSAP, just as Verizon requires all CLECs to transport E911 traffic to Verizon's

selective routers for delivery to Verizon-served PSAPs. Intrado argues that the provision of 911/E911 service to a PSAP is sufficiently different from "plain old telephone service" or POTS, which is the usual subject of an interconnection agreement, that the Commission should feel free to go outside of traditional determinations on interconnection agreements. (Intrado Ex. 1, Hicks Direct, pp. 9-10, and Panel Rebuttal, p. 11; Intrado Ex. 2, Spence-Lenss Direct, pp. 11-12; Intrado Initial Brief, pp. 10-15, and Reply Brief, pp. 4-8). Intrado also argues that its proposal is supported by Section 251(c)(2)(C), which requires the ILEC to provide interconnection to the requesting telecommunications carrier that is at least "equal in quality" to that provided by the local exchange carrier to itself, any subsidiary, affiliate or any other party to which the ILEC provides interconnection. Intrado also argues that the fact that Section 251(c)(2)(B) specifically requires that the point of interconnection be at any technically feasible point on the ILEC's network cannot be used to eviscerate the subsequent subsection. (Intrado Ex. 1, Hicks Direct, p. 14 and Panel Rebuttal, pp. 6-7; Intrado Initial Brief, pp. 8-11; Intrado Reply Brief, pp. 4-5).

Verizon argues that Intrado's request and position are in violation of Section 251(c) of TA96 and pointed out that, in Section 251(c), which delineates additional obligations of incumbent local exchange carriers, ILECs, such as Verizon, are obligated to provide interconnection "at any technically feasible point within the carrier's network." The FCC's supporting rules are even more specific and state that the point of interconnection is to be provided at any technically feasible point within the incumbent LEC network. (See, 47 CFR §51.305(a)(2)). Verizon argues that the fact that CLECs have entered into interconnection agreements with it, which require them to transport 911 calls to Verizon's selective routers when Verizon is serving the PSAP to which those calls are destined, does not constitute a valid reason to require Verizon to transport its end users' 911 calls to Intrado's routers and interconnect on Intrado's network when Intrado serves the PSAP. Verizon argues that the statute and the law are clear; that what Intrado is requesting is simply not permitted; and that Verizon has no obligation to transport 911/E911 calls from Verizon's existing network to Intrado's network. (Verizon Initial Brief and Reply Brief generally).

Verizon also argues that Intrado's proposal potentially would require Verizon to transport calls across LATA boundaries from Verizon's network to a POI on Intrado's network and that Verizon has no such obligation. According to Verizon, for 911/E911 calls originated by Verizon end users to Intrado-serviced PSAPs, Intrado must interconnect with Verizon at a POI on Verizon's network in the LATA where the Verizon end user originates the call. For 911/E911 calls transferred between PSAPs served by the two Parties, Intrado must interconnect with Verizon at a POI on Verizon's network in the LATA where the Verizon-served PSAP, from which or to which the call is being transferred, is located. (Verizon Initial and Reply Briefs generally).

Arbitration Award

A great deal of time and effort was devoted by the parties to this issue in their prepared testimony, their live testimony and their initial and reply briefs. In fact, this issue is quite simple to decide. The

law is clear and unequivocal. Section 251(c) of the Telecommunications Act of 1996 obligates an incumbent local exchange carrier, such as Verizon, to provide, for the facilities and the equipment of any requesting telecommunications carrier, interconnection with the ILEC's network, at any technically feasible point within the ILEC's network. (See, 47 U.S.C §251(c) (2) (B); 47 CFR §51.305(A) (2)). Intrado's arguments are ludicrous on their face. On the one hand, Intrado argues that Verizon cannot use one obligation under Section 251(c) to "obliterate" another obligation under Section 251(c). That is certainly true enough. However, Intrado's own argument would require exactly that outcome.

Further, Intrado's argument that Section 251(c) (2) (C) requires Verizon to interconnect at a POI on Intrado's network, because otherwise it is not providing interconnection that is at least equal in quality to that which it provides itself, is simply unsupported by law or reason. First, as pointed out above, Section 251(c) (2) (B) is quite specific. Second, the FCC has already defined what the "equal in quality" subsection means, at 47 CFR §51.305(a) (3). That rule states the following with respect to the "equal in quality" provision: "At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network." The subsection on which Intrado has hung so much of its argument doesn't even apply to the location of the point of interconnection. It simply means that the technical standards which apply at that point of interconnection must be equal in quality to those technical standards which the ILEC applies to itself throughout its network and to other carriers it has allowed to interconnect on its network.

Intrado also argued that, for the purpose of providing competitive 911/E911 services, the Commission must look beyond the traditional interconnection arrangements used for POTS and seek to establish a physical architecture that addresses the special needs of 911 callers and first responders. Intrado argues that 911/E911 services are unique and different and that the physical architecture it is seeking in this issue is critical to issues of reliability, redundancy and minimizing points of failure for 911/E911 services.

However, Intrado's argument on this point must fail for at least two reasons. First, Section 251 makes no distinction between interconnection for POTS and interconnection for more specialized services. The same requirements and rules apply to all types of interconnection. If the provision of 911/E911 service on a competitive basis is a local exchange service, the same statutory language applies to interconnections to provide that service as for any other telecommunications exchange service. Second, and perhaps more importantly, even if there were a different standard, there is absolutely no evidence in the record of this proceeding to demonstrate that the current 911/E911 system architecture and provision of 911/E911 service in West Virginia are in any way deficient, flawed, substandard or even mediocre. (Verizon Ex. 2.0, pp. 3-4; Tr. pp. 152-153).

Intrado also argued that the provisions of Section 253(b) of TA96 provide the Commission with the requisite authority to modify the way interconnection is provided for 911/E911 services, because that Section

provides that, "Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis, ... requirements necessary to ... protect the public safety and welfare" However, State regulatory authorities are still required to comply with all provisions of the Telecommunications Act of 1996. (Intrado Initial Brief, p. 19). Section 253(b) does not speak in any way to interconnection requirements between an ILEC and a CLEC. It is simply irrelevant to an interconnection determination.

In its argument on this issue, Intrado relied, in part, upon the arbitration award issued by the Public Utilities Commission of Ohio in Case No. 07-1216-TP-ARB, In the matter of the Petition of Intrado Communications, Inc., for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq, pursuant to Section 252(b) of the Telecommunications Act of 1996, September 24, 2008 (Ohio Arbitration Award). Intrado correctly pointed out that, for situations when Intrado was the 911 service provider to the PSAP and Embarq was seeking to allow the completion of its customer's emergency service calls to that PSAP, the ILEC, Embarq, would be required to seek interconnection with Intrado and it was appropriate for the point of interconnection to be on Intrado's network. However, in the Ohio proceeding, Intrado and Embarq had actually agreed during voluntary negotiations that Embarq would interconnect at one point on Intrado's network. Intrado had requested in the arbitration that Embarq be required to have multiple points of interconnection on its network and the Ohio Commission specifically refused to approve that request. Importantly, in a subsequent issue in the same Order, the Ohio Commission clarified its ruling on interconnection by holding that Embarq was only responsible for delivering its traffic to an Intrado selective router located within Embarq's service territory. The Ohio Commission noted that its ruling did not preclude the Parties from mutually agreeing to an additional point or points of interconnection at any technically feasible point either inside or outside of Embarq's territory. In part, the Ohio Commission's clarification was based upon its recognition that Embarq was entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection. (Ohio Arbitration Award, pp. 8, 29, 33).

In a subsequent arbitration award involving Intrado and Cincinnati Bell Telephone Company (CBT), the Ohio Commission further refined its holding on these points to only require CBT to interconnect on Intrado's network at a single point of interconnection within CBT's LATA. (See, Case No. 08-537-TP-ARB, In the matter of the Petition of Intrado Communications, Inc., October 8, 2008, pp. 9-10).

In one respect, however, the undersigned disagrees with the result reached by the Public Utilities Commission of Ohio. In the Ohio arbitration award involving Embarq, and in the subsequent arbitration award involving CBT, the Ohio Commission, apparently, recast Intrado's petition for arbitration from a petition requesting arbitration of its Section 251(c) interconnection request to a petition for arbitration regarding interconnection pursuant to Sections 251(a) and 251(c). The major difference between the two is that, under Section 251(c), the ILEC cannot be required to establish a point of interconnection on the CLEC

network, while, under Section 251(a), the carriers are free to enter into agreements without consideration of the requirements under Sections 251(b) and (c). It was that change that allowed the Ohio Commission to require the ILECs, Enbarq and CBT, to establish a point of interconnection on Intrado's network. The Ohio Commission has taken at least two steps back from the original broad statement, first to limit that point of interconnection to a location in the ILEC service territory and second to limit the POI to a specific LATA.

It is the opinion of the undersigned that, if a carrier files a petition for arbitration of its Section 251(c) interconnection request, the state commission is obligated to arbitrate that request as a Section 251(c) interconnection request. The route taken by the Ohio Commission is fraught with the potential for abuse. It is too easy for state commissions to avoid or modify the requirements established by Congress in TA96, and the more specific requirements established by the FCC in its rules and orders, if the state commission can unilaterally pick out different issues which it wishes to arbitrate in a manner different from what would be required under Section 251(c) and simply designate those issues as Section 251(a) issues. Such potential for abuse is untenable. A request for arbitration of a Section 251(c) interconnection request must be arbitrated in toto as a Section 251(c) arbitration request. The parties to that interconnection agreement certainly can include elements in the agreement which do not specifically relate to the Section 251(b) and (c) requirements; however, the inclusion of those elements in the agreement cannot change the overall characterization of the arbitration proceeding.

It should also be noted that the Telephone Rules adopted by the Commission regarding arbitration under Section 252 omit any reference to §251(a). Only §§251(b) and (c) are mentioned. See, Telephone Rule 15.3.a.

Accordingly, the Verizon-proposed language regarding point(s) of interconnection under the Interconnection Agreement, 911 Attachment §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1 and Glossary §§ 2.63, 2.64 and 2.67 are adopted, because Intrado must connect at points of interconnection on Verizon's network. Glossary §§ 2.94 and 2.95 will be addressed in Issue 6. Verizon cannot be required to interconnect on Intrado's network, as there is no legal obligation for it to do so.

Further, as was pointed out by Verizon in the Disputed Issues Matrix, the pricing provisions of the 911 Attachment and the Pricing Attachment must reflect that Intrado is responsible for the cost of transporting 911/E911 calls outside of Verizon's network; that Intrado may not bill Verizon for interconnection with the Intrado network or for transport facilities or services; that Intrado must pay Verizon for interconnection with Verizon's network; and that Intrado must pay Verizon for any Verizon-provided facilities or services used to transport 911/E911 calls between a point of interconnection on Verizon's network and Intrado's network.