

DISCUSSION AND CONCLUSIONS

Intrado witness Hicks addressed Issue 8(a) in his direct testimony. (Tr. Vol. 1, Pp. 159-60) Mr. Hicks stated he understood that FCC rules require AT&T to provide Intrado nondiscriminatory access to AT&T's 911 and E911 databases on an unbundled basis. AT&T's proposed ICA language reflects this requirement, but not AT&T's need to access these databases when Intrado is the designated 911/E911 service provider. In those cases, other carriers would have to input their customers' information into Intrado's databases, so Intrado proposed terms that would allow AT&T to access Intrado's 911 and E911 databases, and language requiring both parties to work together as co-carriers to upload end user record information into the relevant databases. (Tr. Vol. 1, Pp. 159-60).

AT&T witness Constable addressed this issue in rebuttal testimony. (Tr. Vol. 2, Pp. 203-5) Mr. Constable objected to Intrado's language in Sections 3.4.3 and 3.4.5 of Appendix 911. In Section 3.4.3, Intrado introduces a term "ALI interoperability" that is not defined in NENA standards or the ICA. Mr. Constable indicated that other language in the ICA already adequately addressed the provision of ALI information, and that the addition of this definition only created confusion. (Tr. Vol. 2, Pp. 203-4).

Mr. Constable objected to the inclusion of language in Section 3.4.5 of Appendix 911 that would require AT&T and Intrado to cooperatively maintain steering tables. However, during the hearing, he stated that AT&T's concerns with regard to Section 3.4.5 had been resolved. (Tr. Vol. 2, P. 155).

Provisions addressing database access appear in Appendix 911 of the 13-state agreement. Revised Exhibit JEC-1 is a draft of Appendix 911 showing the changes proposed by AT&T and Intrado. Section 3.4 of this draft addresses database access in the event that AT&T is the designated provider of 911/E911 services. Section 5.4 addresses database access if Intrado is the designated provider of these services.

Each of these sections contains four separate paragraphs. Paragraph 3.4.3 contains the language referring to ALI interoperability that AT&T witness Constable objected to in his testimony. The entire text of this paragraph reads as follows:

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

Mr. Constable specifically noted that the term "ALI interoperability" is not defined in the "Definitions" section of Appendix 911. Because of this, and because the phrase "to support ALI interoperability" used in paragraph 3.4.3 appears to add nothing of substance to the paragraph, the Commission directs the parties to delete this phrase from Appendix 911.

Paragraph 3.4.5 of Appendix 911, which addressed the issue of steering tables, is absent from Revised Exhibit JEC-1. Mr. Constable testified that this issue had been resolved, and his position concerning the steering tables issue and the resolution of that issue were not contested by Intrado. The Commission concludes that there is no issue left to resolve concerning paragraph 3.4.5 and should be left out of the ICA.

There are also certain subtle differences between Sections 3.4 and 5.4 of Appendix 911 that the parties did not directly address. Paragraph 3.4.3 provides that files electronically transmitted to AT&T's E911 database must be "based upon NENA recommended standards." Paragraph 5.4.3, which sets a parallel requirement for files that will be transmitted electronically to Intrado's E911 database, requires that these files be "based upon NENA standards." The Commission is not certain that this slight difference in wording is significant relative to the parties' mutual responsibilities, but the Commission concludes that the requirements specified in these paragraphs should be identical. The Commission directs the parties to either remove the word "recommended" from paragraph 3.4.3 of Appendix 911 or add it to paragraph 5.4.3, whichever they prefer. There are also significant differences between what should be parallel and identical language in paragraphs 3.4.4 and 5.4.4 concerning the parties' responsibilities. The Commission directs the parties to revise these paragraphs so that the mutual responsibilities and wording are consistent, and to include these revised paragraphs in the ICA.

The Commission directs the parties to incorporate all of the changes listed above concerning Issue 8(a) into the final version of the ICA that they file pursuant to this Order.

MATRIX ISSUE NO. 10 AND FINDING OF FACT NO. 25

Issue: What 911/E911-related terms should be included in the ICA and how should those terms be defined?

POSITIONS OF THE PARTIES

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

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

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

DISCUSSION AND CONCLUSIONS

The testimony regarding this issue is limited. This issue was addressed by Intrado witness Clugy (Tr. Vol. 1, Pp. 96-8) and AT&T witness Constable. (Tr. Vol. 2, Pp. 205-7) Intrado witness Clugy testified that the term "End Office" was inserted because it implied the originating office and was a defined term in the agreement. (Tr. Vol. 1, P. 96) AT&T Witness Constable did not address the definition of "911 Trunk" in his testimony, and the only language detailing AT&T's position is found in the Joint Issues Matrix filed with the Commission on August 6.

AT&T witness Constable addressed this issue in his testimony concerning Issue 3(a) in discussing how AT&T's end user 911 traffic would be routed to a PSAP served by Intrado. If an AT&T End Office must connect to the E911 System as proposed by Intrado, then AT&T would conceivably have to establish dedicated trunk groups to each selective router using Intrado's proposed "class marking" translations. (Tr. Vol. 2, P. 174)

This issue is closely connected to Issue 3(a) concerning trunking arrangements when Intrado provides the selective router to the PSAP. Including language stating that a "911 Trunk" is a trunk from AT&T's End Office would imply that traffic from an AT&T end office is directly routed to the Intrado selective router, which is a disputed issue when wire centers are split between PSAP jurisdictions. Thus, resolution of this issue is dependent upon whether the Commission adopts AT&T's primary/secondary selective router proposal or Intrado's "class marking" proposal. Since, the Commission has previously ruled that AT&T's primary/secondary router proposal is more appropriate, the Commission concludes that AT&T's language is appropriate. The term "End Office" should be excluded from the definition of a 911/E911-Trunk.

MATRIX ISSUE 13(a) AND FINDINGS OF FACT NOS. 26 AND 27

Issue: What subset of traffic, if any, should be eligible for intercarrier compensation when exchanged between the parties?

POSITIONS OF THE PARTIES

INTRADO: This issue deals with the parties' exchange of non-911 traffic. AT&T's proposed language improperly classifies the types of traffic subject to intercarrier compensation and imposes onerous terms and conditions on the parties'

exchange of intercarrier compensation that are not consistent with law. AT&T attempts to define "Section 251(b)(5) Traffic" and "ISP-Bound Traffic" as either local or non-local in order to limit its reciprocal compensation obligations to so-called "local" traffic. The FCC has determined that it is inaccurate to limit the application of reciprocal compensation to telecommunications traffic that is "local." Similarly, AT&T's proposed language limits the traffic eligible for compensation between the parties to "wireline" service or "dialtone." The FCC's rules do not impose such a qualification on the subset of traffic that is eligible for compensation, but instead speaks in terms of all telecommunications traffic. Intrado's position and proposed language does not vary based on the outcome of Issue 2. In addition, nearly identical language to that at issue between the parties is contained in AT&T's new 22-state template ICA. AT&T has not demonstrated why similar language cannot be used in the parties' North Carolina agreement.

AT&T: The parties disagree as to the proper definitions for "Section 251(b)(5) Traffic," "ISP-Bound Traffic" and "Switched Access Traffic" as those terms appear in the 13-state template. AT&T defines these terms with specificity to clearly articulate the conditions under which traffic is subject to intercarrier compensation. Intrado's proposed language that generally defines these terms in accordance with "Applicable Law" is unnecessarily vague and should be rejected. There are no terms and conditions in the 9-state template Attachment 3 Interconnection that designate services as "wireline" or "dialtone." 13 state only: The parties disagree in IC §§ 1.2, 16.1 (subsections i and ii), and ITR § 2.14 as to whether Intrado will provide wireline (*i.e.*, dial tone) services. This is a wireline ICA, and Intrado should not be delivering wireless traffic to AT&T over local interconnection trunks pursuant to this agreement. AT&T offers a different ICA to wireless carriers that accommodates the differing requirements of wireless service. If Intrado seeks to deliver wireless traffic to AT&T, Intrado should request a wireless ICA. To the extent Intrado intends to deliver wireless 911 traffic to AT&T, the parties have agreed that Appendix IC does not apply to 911 traffic.

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

DISCUSSION AND CONCLUSIONS

Intrado witness Clugy addressed this issue in direct testimony (Tr. Vol. 1, P. 100), noting that it applies to intercarrier compensation related to the exchange of non-911 traffic. She argued that AT&T's proposed ICA language improperly classifies the types of traffic subject to compensation and imposes compensation terms and conditions that are inconsistent with the law.

As an example, she claimed AT&T tried to define "Section 251(b)(5) Traffic" and "ISP-Bound Traffic" as local or non-local to limit its reciprocal compensation obligations. However, the FCC has ruled that it is inaccurate to assess reciprocal compensation on local traffic only. AT&T also attempts to limit its compensation obligation to wireline or "dialtone" service, even though the FCC's rules do not make this distinction. (Tr. Vol. 1, P. 100).

AT&T witness Pellerin noted in her rebuttal testimony (Tr. Vol. 2, Pp. 60-7), that the parties disagree on the correct definitions for "Section 251(b)(5) Traffic," "ISP-Bound Traffic," and "Switched Access Traffic." Two sections of the GTC, five sections of Appendix IC, and two sections of Appendix ITR remain in dispute. While AT&T defines these terms with specificity in order to clearly identify which traffic is subject to intercarrier compensation, Intrado proposes to leave the compensation requirements subject to "Applicable Law." Ms. Pellerin recommended that the Commission reject Intrado's language as unnecessarily vague. (Tr. Vol. 2, P. 60).

Section 251(b)(5) Traffic

Ms. Pellerin provided AT&T's definition of "Section 251(b)(5) Traffic" as it appears in GTC Section 1.1.124 and Appendix IC Section 4.1:

"Section 251(b)(5) Traffic" shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are:

- a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or
- b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.

Intrado proposes the following definition in lieu of that proposed by AT&T:

"Section 251(b)(5) Traffic" is as defined by Applicable Law, including the rules, regulations, and orders of the FCC and courts of competent jurisdiction. Tr. Vol. 2, page 61, line 2 – page 62, line 20.

Ms. Pellerin argued that AT&T's proposed ICA language, unlike Intrado's, reflected the fact that the physical location of the originating and terminating callers is determinative of whether a call is subject to reciprocal compensation requirements. She

stated that this position was consistent with the FCC's ISP Remand Order⁶ and mirrored the findings of the Public Utilities Commission of Ohio in a 2006 arbitration case involving Ohio Bell Telephone Company and TelCove Operations, Inc.⁷ Based on these considerations, she recommended that the Commission adopt AT&T's proposed language for use in GTC Section 1.1.124 and Appendix IC Section 4.1. During cross-examination, Ms. Pellerin acknowledged that the FCC and the D.C. Court of Appeals were still involved in a dispute over what constitutes Section 251(b)(5) traffic. However, she contended that the FCC's prior rulings had not been vacated to date, and that they currently were still in effect. (Tr. Vol. 2, Pp. 60-2, Pp. 122-5).

The Commission has ruled in a previous arbitration case involving Global NAPs North Carolina, Inc. and Verizon South Inc.⁸ that the traffic eligible for reciprocal compensation must include intraLATA traffic between calling and called parties within the same local calling area. However, the determination of whether the call was local (and therefore, subject to Section 251(b)(5) reciprocal compensation) was based on whether the originating and terminating NPA-NXX were assigned to the same exchange, or to exchanges that shared the same local calling area, as defined by the originating carrier. It was not necessary for the calling and called parties to be physically located within the same local calling area during the call.

Accordingly, the Commission concludes that the definition of Section 251(b)(5) traffic proposed by AT&T is inconsistent with the prior decision of the Commission and that it is appropriate to replace AT&T's proposed ICA language with the language shown below. In addition, in light of the concern Intrado has raised about consistency with "Applicable Law," the Commission finds it reasonable to append an additional sentence at the end of this definition.

"Section 251(b)(5) Traffic" subject to intercarrier reciprocal compensation obligations shall include all intraLATA telecommunications traffic in which the calling party's NPA-NXX and the called party's NPA-NXX are assigned to an exchange or exchanges that share the same local calling area, as defined by the carrier originating the call.

The parties shall promptly amend this interconnection agreement to comply with any FCC or North Carolina Utilities Commission decisions that modify the parties' intercarrier compensation obligations with respect to Section 251(b)(5) Traffic.

⁶ Order on Remand and Report and Order, released April 27, 2001, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic*, FCC 01-131, CC Docket Nos. 96-98, 99-68.

⁷ *In the Matter of TelCove Operations, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Ohio Bell Telephone Company d/b/a SBC Ohio*, Case No. 04-1822-TP-ARB, Arbitration Award dated January 25, 2006, Issue 37.

⁸ *In the Matter of Petition of Global NAPs North Carolina, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon South Inc.*, Docket No. P-1141, Sub 1, Recommended Arbitration Order issued November 27, 2002, Pp. 12-24.

The parties are instructed to incorporate this revised language into GTC Section 1.1.124 and Appendix IC Section 4.1 of the ICA they file pursuant to this Order.

ISP-Bound Traffic

AT&T and Intrado propose the following language in GTC Section 1.1.84 to define "ISP-Bound Traffic."

AT&T:

"ISP-Bound Traffic" shall mean telecommunications traffic, in accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order"). "ISP-Bound Traffic" shall mean telecommunications traffic exchanged between CLEC and AT&T in which the originating End User of one Party and the ISP served by the other Party are:

- a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or
- b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.

Intrado:

"ISP-Bound Traffic" shall mean telecommunications traffic defined in accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order").

(Tr. Vol. 2, Pp. 63-4).

Each party also proposed to include language similar to its proposed language concerning ISP-Bound traffic in Section 5.1 of Appendix IC.

Neither party provided meaningful support for its proposed definition. Intrado contended that AT&T's proposed wording changes were intended to limit its reciprocal

compensation obligations. AT&T argued that it proposed the changes to clearly articulate what was intended (presumably by the FCC or federal courts). In light of the lack of evidence in the record, and the apparent fact that the only significant FCC Order that has attempted to define the nature of ISP-Bound traffic is the FCC's ISP Remand Order⁹ previously cited by AT&T in support of its proposed language concerning Section 252(b)(5) traffic, the Commission concludes that it should adopt Intrado's proposed definition, which explicitly references this FCC Order, for the ICA. However, the Commission chooses to append the following sentence to Intrado's definition:

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

The parties should append this sentence to Intrado's proposed definition of ISP-Bound Traffic and incorporate the entire definition into the ICA that they file pursuant to this Order.

Switched Access Traffic

The parties proposed the following definitions for "Switched Access Traffic" in Section 16 of Appendix IC and Section 12.1 of Appendix ITR.

AT&T:

For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an End User physically located in one local exchange and delivered for termination to an End User physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in AT&T's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the End User's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched

⁹ Order on Remand and Report and Order, released April 27, 2001, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic*, FCC 01-131, CC Docket Nos. 96-98, 99-68.

Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks.

Intrado:

For purposes of this Agreement only, Switched Access Traffic shall be defined consistent with Applicable Law. To the extent required by Applicable Law, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks.

(Tr. Vol. 2, Pp. 64-6).

The Commission has examined the competing definitions and believes, with one exception, that AT&T's proposed definition conforms to the FCC's current views on what constitutes switched access traffic and provides solid guidance to the parties concerning the applicability of access charges to that traffic. The language regarding end users being physically located in a local exchange should be modified to reflect end users with an NPA-NXX associated with a local exchange. In addition, just as in the case of the previous two definitions, the following sentence should be appended to the end of this definition:

The parties shall promptly amend this interconnection agreement to comply with any FCC or North Carolina Utilities Commission decisions that modify this definition or the parties' mutual obligations with respect to Switched Access Traffic.

The parties should append this sentence to AT&T's proposed definition of Switched Access Traffic and incorporate the entire definition into the ICA that they file pursuant to this Order.

"Wireline" or "Dialtone" Service

Intrado witness Clugy objected to AT&T's proposed ICA language that would limit compensable traffic to "wireline" or "dialtone" traffic. (Tr. Vol. 1, P. 100).

AT&T witness Pellerin indicated that the portions of the ICA at issue were Appendix IC Section 1.2 and subsections of Sections 3.5 and 16.1, and Appendix ITR Section 2.14. She contended that the agreement between AT&T and Intrado contemplated only the exchange of wireline traffic, and that Intrado's traffic delivered over the local interconnection trunks and subject to intercarrier compensation should be exclusively wireline traffic. Accordingly, AT&T revised these sections by strategically

adding the words "wireline" and "dialtone" to indicate that reciprocal compensation would not apply to wireless traffic. (Tr. Vol. 2, P. 66).

Ms. Pellerin noted that intercarrier compensation language in the ICA differed considerably between wireline and wireless carriers. Local calling scopes for wireless carriers, for example, were based on Major Trading Areas (MTAs) rather than the local calling areas used by wireline carriers. Wireless carriers also calculate reciprocal compensation by using factors to estimate their relative facilities usage. AT&T's generic CLP agreements do not address these differences, and she suggested that Intrado should request a wireless ICA if it wishes to deliver wireless traffic to AT&T. However, she noted that the parties had agreed that Appendix IC would not apply to any 911 traffic, and that in such a case, the language in dispute would be irrelevant. In any event, she recommended that the Commission adopt the language proposed by AT&T. (Tr. Vol. 2, Pp. 66-7).

The Commission concludes that the parties should retain the references to "wireline" and "dialtone" traffic in Appendix IC and Appendix ITR of the ICA. These terms reflect the apparent understanding between the parties that the rates, terms, and conditions were meant to apply exclusively to wireline traffic. By memorializing this aspect of the agreement, the parties may be able to reduce the likelihood of disputes concerning wireless traffic. In the event that Intrado and AT&T subsequently wish to add wireless traffic to the mix of traffic they are willing to exchange, they are free to negotiate an amendment to this ICA or a separate agreement to reflect this change.

MATRIX ISSUE 13(b) AND FINDINGS OF FACT NOS. 28 AND 29

Issue: Should the parties cooperate to eliminate misrouted access traffic?

INTRADO: Intrado is willing to work with AT&T to eliminate misrouted access traffic. AT&T's language, however, attempts to broadly define "Switched Access Traffic" and address how such traffic may be exchanged between the parties. AT&T's definition and related language regarding Switched Access Traffic does not accurately state the current requirements for such traffic and imposes more onerous restrictions than are currently found in the FCC's rules. The FCC is currently reviewing these issues. Given the uncertainty in this area, Intrado would prefer to refer to "Applicable Law" rather than include terms and conditions that may be contrary to current requirements. Intrado should not be required to go above and beyond what is required under the FCC's current rules. Intrado's position and proposed language does not vary based on the outcome of Issue 2. In addition, nearly identical language to that at issue between the parties is contained in AT&T's new 22-state template ICA. AT&T has not demonstrated why similar language cannot be used in the parties' North Carolina agreement.

AT&T: This issue does not exist if the 9-state template is used. There are no terms and conditions in the 9-state template Attachment 3 Interconnection regarding third party interLATA traffic. 13-state only: AT&T proposes that Intrado assist AT&T in taking action to remove Switched Access Traffic improperly routed over local interconnection

trunks. Intrado's agreement to assist AT&T in identifying such traffic rings hollow in light of Intrado's objection to cooperating to eliminate it. The effective result is that Intrado's proposed language, if adopted, could enable traffic washing and related access avoidance schemes, and AT&T would be limited in its ability to forestall any such fraudulent behavior.

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

DISCUSSION AND CONCLUSIONS

Intrado witness Clugy addressed this issue in direct testimony (Tr. Vol. 1, Pp. 100-1). She disputed AT&T's efforts to broadly define switched access traffic and to specify how the parties would exchange such traffic. Ms. Clugy contended that AT&T's definition and related language misconstrued the FCC's current requirements, which are still under review, and imposed restrictions more onerous than those set by the FCC. She recommended making reference to "Applicable Law" in the ICA rather than specifying terms and conditions that might be contrary to actual FCC requirements. (Tr. Vol. 1, Pp. 100-1).

AT&T witness. Pellerin addressed this issue in her rebuttal testimony. (Tr. Vol. 2, Pp. 80-2) The language at issue is contained in Section 16.2 of Appendix IC. The parties propose different versions of this section:

AT&T:

If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 16.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other Party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked.

Intrado:

If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups.

Witness Pellerin criticized Intrado for agreeing to work with AT&T to identify improperly routed switched access traffic and remove it from the local interconnection trunks, while simultaneously opposing language that would require the parties to seek regulatory approval jointly to block third party traffic or obtain appropriate compensation for it. She outlined the process by which unscrupulous carriers modify the calling party number associated with a toll call and then route the call to the carrier that offers the cheapest rates rather than routing it in accordance with local exchange routing guide (LERG) requirements. Such "phantom traffic" can be routed to local interconnection trunks in order to avoid legitimate access charges. (Tr. Vol. 2, Pp. 80-2).

The Commission strongly encourages the parties to work together to ensure that toll traffic is identified and routed properly and in a manner that allows assessment of legitimate access charges. This includes steps, up to and including the parties seeking assistance from the Commission in ensuring that switched access traffic is routed over the appropriate facilities. However, blocking should not be considered an appropriate remedy for eliminating such traffic from local interconnection groups. The Commission finds that the following language is appropriate for Section 16.2:

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

MATRIX ISSUE NO. 15 AND FINDING OF FACT NO. 46

Issue: Should the ICA permit the retroactive application of charges that are not prohibited by an order or other change in law?

POSITIONS OF THE PARTIES

INTRADO: Intrado agrees that the ICA should include terms and conditions to address subsequent modifications to the ICA and changes in law. Intrado however, disagrees with AT&T's proposed language discussing how such modifications will be implemented. AT&T's language that retroactive compensation adjustments will apply "uniformly" to all traffic exchanged as "local" calls under the agreement. This broad language could allow AT&T to make retroactive compensation adjustments for traffic that is not affected by a change of law. Therefore, Intrado has proposed language that would apply retroactive compensation adjustments consistent with intervening law. Intrado's position and proposed language does not vary based on the outcome of Issue 2. Intrado seeks the language the Parties have already agreed upon and the language Intrado has proposed. Simply stating that the 9-state template does not contain terms and conditions regarding this issue does not provide Intrado with the terms it views as necessary for the ICA, *i.e.*, the language Intrado has proposed in this proceeding. In addition, nearly identical language to the language at issue between the Parties is contained in AT&T's new 22-state template. AT&T has not demonstrated why similar language cannot be used in the Parties' North Carolina agreement.

AT&T: This issue does not exist if the 9-state template is used, because there is no language in Attachment 3 Interconnection regarding retroactive application of charges for ISP-bound traffic. 13-state only: The parties disagree on terms and conditions for retroactive treatment following modification or nullification of the compensation plan ("ISP Compensation Plan") set forth in the FCC's ISP Compensation Order. AT&T proposes in Appendix IC Section 4.2.1 that retroactive treatment would apply to traffic exchanged as "local calls." This is the appropriate classification of traffic to which a retroactive adjustment would apply. Intrado objects to this language, preferring a vague reference to intervening law, which is redundant and therefore unnecessary.

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

DISCUSSION AND CONCLUSIONS

This issue was addressed by Intrado witness Clugy (Tr. Vol. 1, Pp. 95-6) and AT&T witness Pellerin. (Tr. Vol. 2, Pp. 82-3) Both parties appear to agree that the ICA should include terms and conditions to address subsequent modifications to the ICA and changes in law. The parties are seeking to include language in anticipation of a change of law regarding reciprocal compensation of "local" traffic pursuant to the ISP

Compensation Order.¹⁰ Intrado contends AT&T's proposed language is so broad it could apply to traffic not affected by a change in law, and AT&T contends that Intrado's language is vague, redundant, and unnecessary. The Commission agrees that the ICA should provide for a possible change of law regarding reciprocal compensation. Certainly both parties should be clear that any such change of law would only be effective as to the particular type of traffic affected by the change of law. The Commission believes that AT&T's language would not lead to such a misinterpretation and that Intrado's proposed language is unnecessary.

MATRIX ISSUE NO. 18 AND FINDINGS OF FACT NOS. 31 AND 32

Issues: (a) What terms should apply to the ICA? (b) When should Intrado notify AT&T that it seeks to pursue a successor ICA?

POSITIONS OF THE PARTIES

INTRADO: In connection with the Parties' negotiations for an Ohio ICA, they have agreed to contract language to govern term and termination of the ICA. The Parties reached agreement on changes to the AT&T template language after negotiations that revised some provisions of the term and termination section and Intrado agreeing to accept the remainder of the provisions as originally proposed by AT&T. AT&T has indicated that it is unwilling to use the negotiated Ohio provisions for the Parties' North Carolina ICA. Intrado sees no reason to negotiate new generic provisions governing term and termination for use in North Carolina when the Parties have already reached agreement on such provisions that are unaffected by jurisdictional boundaries. This approach is practical and will ensure consistent terms and conditions are used throughout Intrado's service territory to the greatest extent possible. AT&T has provided no reason why the term and termination provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina. Intrado's position and proposed language does not vary based on the outcome of Issue 2. Intrado seeks the language the Parties have already agreed upon. The language agreed upon by the Parties is set forth in AT&T's column. This language should be fully incorporated in the Parties' North Carolina ICA. Simply stating that the 9-state template already addresses this issue does not provide Intrado with the terms it views as necessary for the ICA, *i.e.* the complete language as negotiated for the Parties' Ohio ICA. AT&T has not demonstrated why this language cannot be used in the Parties' North Carolina agreement.

AT&T: There is no contract language in dispute; therefore, this issue does not exist if the 9-state template is used. *See also* Issue 2. The parties have agreed to a three-year term for the ICA. AT&T has agreed to modify its 9-state language in GTC Section 2 accordingly. In negotiations for Ohio, the parties agreed to the following 13-state language:

¹⁰ Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("ISP Compensation Order").

7. EFFECTIVE DATE, TERM AND TERMINATION

7.1 In AT&T OHIO the Agreement is Effective upon filing ("Effective Date") and is deemed approved by operation of law on the 91st day after filing.

7.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire three (3) years from the Effective Date ("Term"). Absent the receipt by one Party of written notice from the other Party within 180 calendar days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term, this Agreement shall remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 7.3 or 7.4.

7.3 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection, **Resale Services, Lawful Unbundled Network Elements**, functions, facilities, products or services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material Term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof. Any termination of this Agreement pursuant to this Section 7.3 shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within forty-five (45) calendar days after written notice thereof.

7.4 If pursuant to Section 7.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Sections 7.5 and 7.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 7.4 other than its obligations under Sections 7.5 and 7.6.

7.5 Upon termination or expiration of this Agreement in accordance with Sections 7.2, 7.3 or 7.4:

7.5.1 Each Party shall continue to comply with its obligations set forth in Section 42, Scope of this Agreement; and

7.5.2 Each Party shall promptly pay all amounts owed under this Agreement or place any Disputed Amounts into an escrow account that complies with Section 10.4 hereof;

7.5.3 Each Party's confidentiality obligations shall survive; and

7.5.4 Each Party's indemnification obligations shall survive,

7.6 If either Party serves notice of expiration pursuant to Section 7.2 or Section 7.4, CESTC shall have ten (10) calendar days to provide AT&T-OHIO written confirmation if CESTC wishes to pursue a successor agreement with AT&T-OHIO or terminate its agreement. CESTC shall identify the action to be taken on each applicable (13) state(s). If CESTC wishes to pursue a successor agreement with AT&T-OHIO, CESTC shall attach to its written confirmation or notice of expiration/termination, as

applicable, a written request to commence negotiations with AT&T-OHIO under Sections 251/252 of the Act and identify each of the state(s) the successor agreement will cover. Upon receipt of CESTC's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.

7.7 If written notice is not issued pursuant to Section 7.2 the rates, terms and conditions of this Agreement shall continue in full force and effect until the earlier of (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the date that is ten (10) months after the date on which AT&T-OHIO received CESTC's Section 252(a)(1) request.

7.8 If at anytime during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), CESTC withdraws its Section 252(a)(1) request, CESTC must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that CESTC does not wish to pursue a successor agreement with AT&T-OHIO for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CESTC provides notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) calendar day following AT&T-OHIO's receipt of CESTC's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall, have no further obligations under this Agreement except those set forth in Section 7.5 of this Agreement.

7.9 If CESTC does not affirmatively state that it wishes to pursue a successor agreement with AT&T-OHIO in its, as applicable, notice of expiration or termination or the written confirmation required after receipt of the AT&T-owned ILEC's notice of expiration or termination, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) calendar days after the date CESTC provided or received notice of expiration or termination. If the Term of this Agreement has expired, on the ninety-first (91st) day following CESTC provided or received notice of expiration or termination, the Parties shall have no further obligations under this Agreement except those set forth in Section 7.5 of this Agreement.

7.10 In the event of termination of this Agreement pursuant to Section 7, AT&T-OHIO and CESTC shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that CESTC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its customers End Users have been

transitioned to a new LEC by the expiration date or termination date of this Agreement.

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

DISCUSSION AND CONCLUSIONS

This issue was addressed by Intrado witness Clugy (Tr. Vol. 1, Pp. 103-5) and AT&T witness Pellerin. (Tr. Vol. 2, P. 54) It appears that both parties have now agreed to a three-year term for the ICA. AT&T and Intrado have also agreed in Ohio that when one Party seeks to terminate the ICA, Intrado has the right to request a successor agreement from AT&T within ten days. There appears to be no dispute on this issue or its subparts. The Commission therefore finds that there should be a three-year term for the ICA and, when one party seeks to terminate the ICA, Intrado has the right to request a successor agreement from AT&T within ten days.

MATRIX ISSUE NO. 20 AND FINDING OF FACT NO. 33

Issue: What are the appropriate terms and conditions regarding billing and invoicing audits?

POSITIONS OF THE PARTIES

INTRADO: In connection with the Parties' negotiations for an Ohio ICA, they have agreed to contract language to govern audits. The Parties reached agreement on changes to the AT&T template language after negotiations that revised some provisions of the audit section and Intrado agreeing to accept the remainder of the provisions as originally proposed by AT&T. AT&T has indicated that it is unwilling to use the negotiated Ohio audit provisions in the Parties' North Carolina ICA. Intrado sees no reason to negotiate new generic provisions governing audits for use in North Carolina when the Parties have already reached agreement on such provisions that are unaffected by jurisdictional boundaries. This approach is practical and will ensure consistent terms and conditions are used throughout Intrado's service territory to the greatest extent possible. AT&T has provided no reason why the audit provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

Intrado's position and proposed language does not vary based on the outcome of Issue 2. Intrado seeks the language the Parties have already agreed upon. The language agreed upon by the Parties should be fully incorporated in the Parties' North Carolina ICA. Simply stating that the 9-state template does not address this issue does not provide Intrado with the terms it views as necessary for the ICA, i.e., the complete language as negotiated for the Parties' Ohio ICA. In addition, nearly identical language to that agreed-upon by the Parties is contained in AT&T's new 22-state template ICA.

AT&T has not demonstrated why this language cannot be used in the Parties' North Carolina agreement.

AT&T: There is no contract language in dispute; therefore, this issue does not exist if the 9-state template is used. See also Issue 2. Moreover, there is no language in the 9-state template that addresses billing and invoicing audits.

PUBLIC STAFF: The ICA should reflect the language agreed to by the parties in the Ohio ICA with respect to the terms and conditions regarding billing and invoicing audits.

DISCUSSION AND CONCLUSIONS

This issue was addressed by Intrado witness Clugy. (Tr. Vol. 1, Pp. 105-6) AT&T witness Pellerin testified that the parties have agreed upon language based upon the 13-state template. Additionally, if the 9-state template is used, it would be inappropriate to import the 13-state template language from this issue into the 9-state template. (Tr. Vol. 2, Pp. 53-54) Intrado witness Clugy also testified that the parties have agreed upon appropriate language using the 13-state template. The dispute centers on AT&T's refusal to use the 13-state template for the North Carolina ICA. (Tr. Vol. 1, P. 105)

Since the Commission has concluded in Finding of Fact No. 5 that the 13-state template is the appropriate model to use in this proceeding, it finds there is no dispute between the parties with regard to this issue. Therefore, the Commission concludes that the language in the 13-state template is appropriate for determining the terms and conditions regarding billing and invoicing audits.

MATRIX ISSUE NO. 22 AND FINDING OF FACT NO. 34

Issue: Should Intrado be permitted to assign the ICA to an affiliated entity? If so, what restrictions, if any should apply if that affiliate has an effective ICA with AT&T?

POSITIONS OF THE PARTIES

INTRADO: In connection with the Parties' negotiations for an Ohio ICA, they have agreed to contract language to govern assignment of the ICA. The Parties reached agreement on changes to the AT&T template language after negotiations that revised some provisions of the assignment section and Intrado agreeing to accept the remainder of the provisions as originally proposed by AT&T. AT&T has indicated that it is unwilling to use the negotiated Ohio assignment provisions for the Parties' North Carolina ICA. Intrado sees no reason to negotiate new generic provisions like assignment for use in North Carolina when the Parties have already reached agreement on such provisions that are unaffected by jurisdictional boundaries. This approach is practical and will ensure consistent terms and conditions are used throughout Intrado's service territory to the greatest extent possible. AT&T has provided no reason why the

assignment provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina. Intrado's position and proposed language does not vary based on the outcome of Issue 2. Intrado seeks the language the Parties have already agreed upon. This language should be fully incorporated in the Parties' North Carolina ICA. Simply stating that the 9-state template does not address this issue does not provide Intrado with the terms it views as necessary for the ICA. *i.e.*, the complete language as negotiated for the Parties' Ohio ICA. In addition, nearly identical language to that agreed-upon by the Parties is contained in AT&T's new 22-state template ICA. AT&T has not demonstrated why this language cannot be used in the Parties' North Carolina agreement.

AT&T: There is no contract language in dispute; therefore, this issue does not exist if the 9-state template is used. See *also* Issue 2. Moreover, there is no language in the 9-state template that addresses assignment of the ICA.

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

DISCUSSION AND CONCLUSIONS

This issue was addressed by Intrado witness Clugy. (Tr. Vol. 1, Pp. 107-8) She testified that AT&T's proposed assignment language limits Intrado's right to assign the ICA to an affiliate if the affiliate also has an ICA with AT&T. Intrado agrees with AT&T that if its affiliate has an ICA with AT&T, that agreement should be terminated prior to Intrado's assignment of its ICA to that affiliate. Ms. Clugy indicated this issue was resolved via negotiation by the parties in Ohio, but AT&T is unwilling to use the 13-state agreement as the basis for the North Carolina agreement.

Intrado has satisfied its burden on this issue. As the Commission has previously found in Finding of Fact No. 5 that the 13-state template is appropriate for use in this proceeding, the Commission concludes that as long as an affiliate is properly certified in North Carolina and the Commission has received proper documentation, it is acceptable for the ICA to provide that it can be assigned to an affiliate if that affiliate's ICA has been terminated prior to such assignment.

MATRIX ISSUE 23 AND FINDING OF FACT NO. 35

Issue: Should AT&T be permitted to recover its costs, on an individual case basis, for performing specific administrative activities? If so, what are the specific administrative activities?

POSITIONS OF THE PARTIES

INTRADO: In connection with the parties' negotiations for an Ohio ICA, they have agreed to contract language to govern name changes and company code changes resulting from transfers and acquisitions. The parties reached agreement on changes to the AT&T template language after negotiations that revised some provisions of this section and Intrado agreed to accept the remainder of the provisions as originally proposed by AT&T. AT&T has indicated that it is unwilling to use the negotiated Ohio name change and company code change provisions for the parties' North Carolina ICA. Intrado sees no reason to negotiate new generic provisions like how to address name changes and company code changes for use in North Carolina when the parties have already reached agreement on such provisions that are unaffected by jurisdictional boundaries. This approach is practical and will ensure consistent terms and conditions are used throughout Intrado's service territory to the greatest extent possible. AT&T has provided no reason why the name change and company code provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina. Intrado's position and proposed language do not vary based on the outcome of Issue 2. Intrado seeks the language the parties have already agreed upon, which is set forth in AT&T's column. This language should be fully incorporated in the parties' North Carolina ICA. Simply stating that the 9-state template does not address this issue does not provide Intrado with the terms it views as necessary for the ICA, *i.e.*, the complete language as negotiated for the parties' Ohio ICA. In addition, nearly identical language to that agreed upon by the parties is contained in AT&T's new 22-state template ICA. AT&T has not demonstrated why this language cannot be used in the parties' North Carolina agreement.

AT&T: There is no contract language in dispute. This issue does not exist if the 9-state template is used, because there is no language in the 9-state template that addresses costs for company code changes. In negotiations for Ohio, the parties agreed to specific 13-state language in GTC section 6.3. However, it would be inappropriate to transfer language that both parties had agreed to for the 13-state Ohio agreement to the 9-state template that has been used for AT&T's North Carolina agreements.

PUBLIC STAFF: There appears to be no significant dispute between the parties with respect to the 13-state contract language Intrado proposes to include in the North Carolina ICA. This language is presented in Section 6.3 of the General Terms and Conditions of the 12/18/07 draft agreement Intrado filed with its arbitration petition. The Commission should require the parties to incorporate this language, suitably modified to reflect any North Carolina-specific requirements and terminology, into the ICA they file pursuant to this Order.

DISCUSSION AND CONCLUSIONS

Intrado witness Clugy addressed this issue in her direct testimony. She stated that AT&T has proposed language that could allow it to impose charges on Intrado, determined on an individual case basis (ICB) for administrative activities associated with

collocation. Intrado is asking that AT&T be required to notify Intrado of the charges prior to performing the work so Intrado can decide whether to proceed with the request. She indicated that this issue is not present in the 13-state agreement. However, AT&T is unwilling to use the 13-state agreement as the basis for the parties' North Carolina agreement, despite the lack of any technical or other limitation to justify its refusal. (Tr. Vol. 1, P. 108).

AT&T witness Pellerin addressed this issue in the discussion of Finding of Fact No. 5 in her rebuttal testimony. She noted that the parties resolved their language/content disputes for Issue 23 and ten other issues during negotiations for an ICA in Ohio. However, she contended that it would be inappropriate to transfer language that both parties had agreed to for the 13-state Ohio agreement to the 9-state template that has been used for AT&T's North Carolina agreements. (Tr. Vol. 2, Pp. 53-4).

Based on the positions as stated in the Revised Joint Matrix and testimony presented by the parties, the Commission finds that there is no material dispute between the parties with respect to the language contained in Section 6.3 of the GTC portion of the 13-state agreement. Since the Commission has already concluded in Issue 2 that the 13-state agreement is the appropriate template to use as the starting point for negotiations in North Carolina, the Commission concludes that this issue should be resolved in Intrado's favor. The Commission directs AT&T and Intrado to amend their North Carolina ICA by adding the 13-state language agreed upon in Ohio concerning name changes and company code changes resulting from transfers and acquisitions (Section 6.3 of the GTCs). This language should be modified appropriately to reflect any North Carolina-specific requirements and terminology.

MATRIX ISSUE NO. 24 AND FINDINGS OF FACT NOS. 36 AND 37

Issue: What limitations of liability and/or indemnification language should be included in the ICA?

POSITIONS OF THE PARTIES

INTRADO: The Parties have reached resolution on the majority of the limitation of liability and indemnification provisions of the ICA in connection with their Ohio negotiations (either via a negotiated resolution or Intrado's or AT&T's originally proposed language). Two issues remain. The first issue is whether AT&T may limit its liability for losses arising from the provision of 911 services. AT&T's language indicates that it will not be liable to Intrado, Intrado's end user, or any other person for losses arising out of the provision of access to 911 service or any errors, interruptions, defects, failures, or malfunctions of 911. This is very broad language and gives AT&T unlimited protection from liability. Intrado has therefore proposed language that would make AT&T liable for losses if the provision of access to 911 service or errors, interruptions, defects, failures, or malfunctions of 911 were attributable to AT&T. Carriers typically cannot limit their liability for errors that are caused by gross negligence or willful

misconduct, but AT&T's language does just that. The second issue deals with the implementation of the limitation of liability and indemnification language into the Parties' North Carolina agreement. In connection with the Parties' negotiations for an Ohio ICA, the Parties have agreed to contract language to govern limitation of liability and indemnification under the ICA. The Parties reached agreement on changes to the AT&T template language after negotiations that revised some provisions of the limitation of liability and indemnification provisions and Intrado agreeing to accept the remainder of the provisions as originally proposed by AT&T. AT&T has indicated that it is unwilling to use the negotiated Ohio limitation of liability and indemnification provisions for the Parties' North Carolina ICA. Intrado sees no reason to negotiate new generic provisions like limitation of liability and indemnification for use in North Carolina when the Parties have already reached agreement on such provisions, that are unaffected by jurisdictional boundaries. This approach is practical and will ensure consistent terms and conditions are used throughout Intrado's service territory to the greatest extent possible. AT&T has provided no reason why the limitation of liability and indemnification provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina. In addition, nearly identical language to that at issue between the Parties is contained in AT&T's new 22-state template ICA. AT&T has not demonstrated why this language cannot be used in the Parties' North Carolina agreement.

AT&T: In the 9-state template, GTC Section 5 provides general liability terms and conditions. There are no liability provisions specific to 911 services. AT&T disagrees with Intrado's proposed language in the 13-state GTC § 15.7 that limits AT&T's liability for 911 failures only to those circumstances not "attributable to AT&T." Such language should be rejected because it is vague, ambiguous, and subject to dispute. Furthermore, system and/or equipment "errors, defects, interruptions, failures or malfunctions" that result from the normal course of doing business may very well be the result of actions outside of AT&T's control, but might still be considered as "attributable to AT&T." Moreover, Intrado's tariffs typically include extensive liability language that would protect Intrado in such circumstances.

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

DISCUSSION AND CONCLUSIONS

This issue was addressed by Intrado witness Clugy (Tr. Vol. 1, P. 109) and AT&T witness Pellerin (Tr. Vol. 2, Pp. 67-70).

According to Ms. Clugy, the language proposed by AT&T is very broad and gives it unlimited protection from liability. Intrado proposes that language be incorporated into the ICA making AT&T liable for losses connected to the provision of 911 service attributable to AT&T. Ms. Clugy states that it is her understanding that carriers cannot

limit their liability for errors caused by gross negligence or willful misconduct as AT&T's proposed languages appears to do, but cites no authority for this proposition.

AT&T witness Pellerin explains that there are two disputed areas in regard to the limitation of liability language. First, AT&T proposes to substitute "customer" for "End User" because Intrado will not be serving End Users, but customers, including other carriers. AT&T contends that replacing "End User" with "customer" would appropriately limit its liability. Second, AT&T disagrees with language holding it liable for damage "attributable to AT&T" which may be the result of actions outside of AT&T's control, such as a disruption of service caused by an independent contractor. AT&T points out that Intrado's Tariff limits Intrado's liability to repair or replacement. AT&T contends that if its liability is not properly limited, the cost and risk of providing 911 service would be prohibitive.

AT&T proposes to change the term "End User" to the word "customer". The provision discussed by Ms. Pellerin not only limits the liability to "End Users", but also to "any other Person". The definition of "Person" appears to cover every type of entity, including "customers". With the limitation of liability applying to "any other Person", AT&T's liability should be appropriately limited.

As for the limitation of liability itself, it appears that the language proposed by Intrado would potentially make AT&T liable for any acts or omissions, whether willful, wanton, intentional, merely negligent, or even unintentional. On the other hand, AT&T's proposed language would protect it from liability for any acts or omissions, including willful, wanton, and intentional acts. The Parties' positions lie on either end of the spectrum, and it seems appropriate to protect AT&T from liability for unintentional or negligent acts or omissions, but potentially allow liability for willful, wanton, or intentional acts or omissions. There are more likely to be "life or death" situations involved with the provision of 911 service, so it is important that the parties exercise the utmost degree of care to ensure that the service is of the highest quality.

MATRIX ISSUE NOS. 25(a), 25(b), 25(c), AND 25(d) AND FINDING OF FACT NO. 38

Issues: (a) Should disputed charges be subject to late payment penalties? (b) Should the failure to pay charges, either disputed or undisputed, be grounds for the disconnection of services? (c) Following notification of unpaid amounts, how long should Intrado have to remit payment? (d) Should the parties be required to make payments using an automated clearing house network?

POSITIONS OF THE PARTIES

INTRADO: In connection with the parties' negotiations for an Ohio ICA, they have agreed to contract language governing billing and payment. The parties reached agreement on charges to the AT&T template language after negotiations that revised some provisions of the billing and payment section and Intrado agreeing to accept the remainder of the provisions as originally proposed by AT&T. AT&T has indicated that it

is unwilling to use the negotiated Ohio billing and payment provisions for the parties' North Carolina ICA. Intrado sees no reason to negotiate new generic provisions like billing and payment for use in North Carolina when the parties have already reached agreement on such provisions that are unaffected by jurisdictional boundaries. This approach is practical and will ensure consistent terms and conditions are used throughout Intrado's service territory to the greatest extent possible. AT&T has provided no reason by billing and payment provisions it found acceptable for use in Ohio are not acceptable for use in North Carolina.

AT&T: There is no contract language in dispute; therefore, these issues do not exist if the 9-state template is used. See also Issue 2. Moreover, the 9-state template does not contain terms and conditions requiring payment of disputed amounts into an escrow account. Billing and payment terms and conditions are set forth in Attachment 7 Billing.

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

DISCUSSION AND CONCLUSIONS

These issues were addressed by Intrado witness Spence-Lenss (Tr. Vol. 1, Pp. 28- 30, Pp. 49-51) and AT&T witness Pellerin (Tr. Vol. 2, Pp. 83-6) This dispute centers on how late payment charges and interest will be defined when disputed charges are paid into an interest-bearing escrow account. Intrado witness Spence-Lenss testified that the language proposed by AT&T in sections 10.5 and 10.6.3 is inconsistent with that agreed to in section 10.1.4. Specifically, section 10.1.4 states that Intrado would not be subject to late payment charges if it pays AT&T by the bill due date or places any disputed charges into escrow. However, witness Spence-Lenss states that the language in sections 10.5 and 10.6.3 impose late payment charges on disputed amounts that Intrado places into escrow. (Tr. Vol. 1, Pp. 50-51)

AT&T witness Pellerin testified that the parties agree that the escrow account must be interest-bearing. Further, because of this, the interest that is paid from the escrow account is generated by the financial institution holding the account and does not come out of Intrado's pocket. Paying interest imposes no additional cost on Intrado, while not paying interest imposes a cost on AT&T. Specifically, AT&T would lose the time-value of money that was rightfully owed by Intrado all along. (Tr. Vol. 2, P. 85)

The Commission believes that this issue appears to consist more of semantics than of substance. Based on the testimony presented in the case, the two parties appear to have the same position, that disputed charges will be deposited into an interest-bearing escrow account. However, they differ on the language used to accomplish this. It appears that Intrado fears AT&T will seek to recover late payment charges in addition to the interest earned from the escrow account while AT&T fears that Intrado will not allow it to receive the interest earned on the disputed amount. AT&T's testimony appears clear that late payment charges do not apply to disputed

charges when put into escrow by the payment due date. (Tr. Vol. 2, P. 84) And both parties appear to concur in language that the interest earned in the escrow account by the disputed amount would be disbursed to the parties in the same proportion as the principal.

However, for clarification purposes, the Commission believes it is not unreasonable for the language in the agreement to specify that for disputed charges put into the escrow account in a timely manner, the only fees would be the interest earned through the escrow account associated with the disputed charge. Language specifically stating this position would seem to resolve the concerns of both Intrado and AT&T and should be included in the ICA.

MATRIX ISSUE NO. 29(a) AND FINDINGS OF FACT NOS. 39 AND 40

Issue: What rounding practices should apply for reciprocal compensation usage and airline mileage?

POSITIONS OF THE PARTIES

INTRADO: AT&T's proposed language does not represent current industry practice. Per-minute charges are normally billed in six-second increments. AT&T, however, seeks to round up charges to the next minute. Similarly, per-mile charges are normally billed in one-fifth mile increments. AT&T seeks to round up to the next whole mile. Intrado's position and proposed language does not vary based on the outcome of Issue 2. Simply stating that the 9-state template does not address this issue does not provide Intrado with the terms it views as necessary for the ICA, i.e., the language as proposed by Intrado inclusion in the Parties' ICA.

AT&T: AT&T's proposal for rounding airline mileage to the next mile (rather than to the next 1/5 mile as proposed by Intrado) is consistent with industry standard guidelines. The language dispute regarding usage rounding for reciprocal compensation does not exist if the 9-state template is used. Due to switch recording limitations, AT&T bills reciprocal compensation based on jurisdictional reporting factors rather than actual usage. Moreover, because there is no usage to round, it is pointless to consider whether one minute or six seconds is the appropriate usage rounding interval. AT&T should not be required to upgrade its switches and billing systems to accommodate Intrado's desire for six second usage rounding (which is not industry standard practice in any event).

PUBLIC STAFF: Airline mileage should be rounded to the next whole mile. Rounding for reciprocal compensation usage should be to the next whole minute in cases where actual usage is not available and the billing party relies on jurisdictional reporting factors.

DISCUSSION AND CONCLUSIONS

Intrado witness Hicks provided testimony on this issue on behalf of the Petitioner (Tr. Vol. 1, P. 160), and AT&T witness Pellerin provided testimony on behalf of AT&T. (Tr. Vol. 2, Pp. 70-3) Mr. Hicks testified that per minute charges are normally billed in six-second increments, but that AT&T is seeking to round up charges for usage to the next whole minute. Additionally, per mile charges are normally billed in one-fifth mile increments, but AT&T is seeking to round up to the next whole mile.

Ms. Pellerin testified that the appropriate increment for rounding distance sensitive rates is one mile, which she claimed was standard in the industry for carrier interconnection. Additionally, Ms. Pellerin stated that the Multiple Exchange Carrier Access Billing Guidelines provide that the appropriate method for calculating the distance sensitive portion of local transport is to round fractional mileage to the next whole number. This is consistent with AT&T's intrastate switched access tariff and in calculating the airline mileage between wire centers. (Tr. Vol. 2, Pp. 70-1)

Ms. Pellerin further testified that the appropriate rounding increment for calculation of reciprocal compensation usage is to the next whole minute. Reciprocal compensation is calculated by accumulating the usage on a trunk group for a month and then rounding up before billing at the agreed upon rate of \$0.0007 per minute. She argued that this is the standard practice used by AT&T, is in effect with other carriers, and should be adopted by the Commission. (Tr. Vol. 2, Pp. 72-73)

Upon cross-examination, Ms. Pellerin explained that AT&T's switches in North Carolina do not have the capability to calculate the usage measurements and billing based on actual usage. Instead, the parties to an agreement provide factors that are applied to the buckets of minutes. According to Ms. Pellerin, AT&T would need to expend resources to update switches, operational systems, and billing systems to provide billing in six-second increments as requested by Intrado. (Tr. Vol. 2, P. 141)

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

MATRIX ISSUE NO. 29(b) AND FINDING OF FACT NO. 41

Issue: Is AT&T permitted to impose unspecified non-recurring charges on Intrado?

POSITIONS OF THE PARTIES

INTRADO: Intrado understands that some items must be individually charged as non-recurring charges depending on the specific request made by Intrado. Both Parties, however, must identify any services to which such charges may apply and how those charges will be calculated. Notification must be given to the other Party before applying any charges. Any charges to be applied to Intrado via the ICA must be developed through the Section 252 process with approval by the Commission. AT&T's proposed language would allow AT&T to arbitrarily develop rates and post those rates on its website. Intrado's position and proposed language does not vary based on the outcome of Issue 2. Simply stating that the 9-state template resolves the issue does not provide Intrado with the terms it views as necessary for the ICA, *i.e.*, the language Intrado has proposed in this proceeding and that has been agreed-upon by the Parties.

AT&T: There is no general pricing attachment in the 9-state template. Instead prices are set forth with each individual attachment. Attachment 2 Network Elements states that if no rate is provided in the agreement, the rate will be as set forth in the tariff or as negotiated by the parties. The parties have a dispute remaining in 13-state Appendix Pricing with respect to pricing for services not included in the ICA, but nonetheless ordered by Intrado and inadvertently provisioned by AT&T. The parties agree that Intrado shall pay the tariffed rate, to the extent one exists. The parties disagree, however, regarding pricing if no tariff rate exists. AT&T proposes that such services be priced based on the AT&T's standard generic contract rate because Intrado should pay the same rate as other CLPs. AT&T further proposes that it may reject future orders until the ICA is amended to include such services.

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

DISCUSSION AND CONCLUSIONS

Intrado witness Hicks (Tr. Vol. 1, Pp. 160-1) and AT&T witness Pellerin (Tr. Vol. 2, Pp. 73-6) provided testimony on this issue. Mr. Hicks testified that the company understands that some items must be individually charged as non-recurring charges depending on the specific request made by Intrado. However, both parties must identify any services to which such charges may apply and how those charges will be calculated. Notification must be given to the other party before applying any charges. (Tr. Vol. 1, P. 161)

AT&T witness Pellerin testified that this issue pertains to products and services that AT&T may inadvertently provide to Intrado not contained in the ICA. The ICA specifies that if Intrado orders a product or service not contained in the ICA, AT&T should reject that order. However, there may be instances in which AT&T fulfills an order for a product or service not contained in the ICA. The issue at hand is how to compensate AT&T for providing that product or service. (Tr. Vol. 2, P. 74)

The language proposed by AT&T would require Intrado to pay the standard generic rate that another CLP would pay for the same product or service, assuming there is no rate in AT&T's tariff. Intrado's language would require AT&T to propose a rate for Intrado's acceptance, even though this rate may be already contained in an effective ICA for another CLP. Additionally, Intrado has objected to language that would require Intrado to pay for these improperly ordered services at all. (Tr. Vol. 2, P. 75)

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

MATRIX ISSUE NO. 33 AND FINDING OF FACT NO. 42

Issue: Should AT&T be required to provide UNEs to Intrado at parity with what it provides to itself?

POSITIONS OF THE PARTIES

INTRADO: In connection with the Parties' negotiations for an Ohio ICA, the Parties have agreed to language to address Intrado's concerns with AT&T's proposed UNE language. Intrado sought to ensure that AT&T would provide UNEs to Intrado at parity to itself and other telecommunications carriers to which AT&T provides UNEs consistent with the FCC's rules. This issue remains open however, because AT&T is unwilling to include that language in the Parties' North Carolina ICA. The language agreed upon is not "state-specific" and is consistent with the FCC's requirements. There is no reason the same language cannot be used in the Parties' North Carolina ICA. Intrado's position and proposed language does not vary based on the outcome of Issue 2. Intrado seeks the language the Parties have already agreed upon. Simply stating that the 9-state template does not address this issue does not provide Intrado with the terms it views as necessary for the ICA, *i.e.*, the complete language as negotiated for the Parties' Ohio ICA.

AT&T: There is no contract language in dispute; therefore, this issue does not exist if the 9-state template is used. See *a/so* Issue 2. The parties agreed to certain language in 13-state Appendix UNE (to the extent the Ohio commission requires that the ICA includes terms and conditions for unbundled network elements). There is no comparable language in the 9-state template.

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

DISCUSSION AND CONCLUSIONS

This issue was addressed in the direct testimony of Intrado witness Hicks. (Tr. Vol. 1, Pp. 161-2) AT&T witness Pellerin did not specifically address the disagreement between the parties on this issue, but noted that this issue was resolved between the parties in their Ohio negotiations and would not arise if the 9-state template is used. (Tr. Vol. 2, P. 53)

As the Commission has found that the 13-state template may be used for the ICA between the parties, it must resolve this issue. Intrado is requesting that the following language from its Ohio ICA be adopted:

2.10 To the extent technically feasible, the quality of the Lawful UNE and access to such Lawful UNE shall be at least equal to what AT&T-OHIO provides to itself and to other telecommunications carriers requesting access to the Lawful UNE (47 CFR § 51.311(a), (b)).

It appears to the Commission that Intrado is seeking inclusion of language which would require AT&T to adhere to 47 CFR § 51.311(a) and (b). The Commission is not clear how Intrado would benefit if AT&T commits to adhering to a requirement that is already binding upon it. The Commission notes that it believes the paraphrase of 47 CFR § 51.311(a) and (b) in Intrado's proposed Section 2.10 is a fair characterization of AT&T's obligation. As such, the Commission declines to require that the ICA explicitly state that, to the extent technically feasible, the quality of the UNEs and access to such UNEs shall be at least equal to what AT&T provides to itself and to other telecommunications carriers requesting access to the UNEs because AT&T is already subject to this legal obligation.

MATRIX ISSUES 34(a) AND 34(b) AND FINDING OF FACT NO. 43

**Issues: 34(a) How should a "non-standard" collocation request be defined?
34(b) Should non-standard requests be priced based on an individual case basis?**

POSITIONS OF THE PARTIES

INTRADO: AT&T has proposed language that would permit it to charge Intrado for "non-standard" collocation requests made by Intrado. Once AT&T provides one provider with a certain arrangement, it should no longer be considered "non-standard" and subject to varying costs based on AT&T's independent determination. AT&T should not be permitted to impose "non-standard" charges on Intrado for arrangements

that AT&T has provided to other service providers. The FCC has found that if a particular method of interconnection or collocation is currently employed between two networks or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures and ILECs bear the burden of demonstrating technical feasibility. AT&T should not be permitted to impose arbitrary costs on Intrado when AT&T has already provided similar arrangement to another provider. Simply stating that the 9-state template does not address this issue does not provide Intrado with the terms it views as necessary for the ICA, i.e., the complete language as proposed by Intrado.

AT&T: This issue does not exist if the 9-state template is used because Attachment 4 Collocation does not include provisions to charge on a case by case basis for "non-standard" collocation.

13-state only:

- (a) A non-standard collocation request is any collocation request that is beyond the terms and conditions set forth in the interconnection agreement.
- (b) Yes. Intrado should be required to pay non-standard collocation arrangements based on the specific criteria of the request (i.e., individual case basis). While another carrier might have what Intrado would characterize as "similar" to what Intrado requests, it may actually be quite different – resulting in different costs to AT&T North Carolina to provision and leading to disputes. Furthermore, another carrier's collocation arrangement may have been engineered and provisioned several years ago, making any associated costs obsolete. Individual case basis (ICB) pricing is appropriate for any non-standard collocation arrangement.

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

DISCUSSION AND CONCLUSIONS

Intrado witness s Hicks addressed Issues 34(a) and (b) in his direct testimony (Tr. Vol. 1, P. 162) and during cross-examination by the Public Staff. When asked what would justify a non-standard collocation request, he opined that AT&T wanted to be protected from anything out of the ordinary requested by a CLP. While he understood AT&T's position, he argued that Intrado also wants to be treated fairly, and if AT&T has previously provided a similar collocation arrangement, then the pricing should be equivalent. (Tr. Vol. 1, Pp. 260-1)

If AT&T deployed equipment, witness Hicks stated that AT&T and Intrado should jointly make a determination of the appropriate charges, taking into account whether a similar deployment had been performed previously. Otherwise, Intrado would have to merely presume that it was charging Intrado fairly. If Intrado subsequently learned that another collocater had installed similar equipment at a much lower rate than that offered

to Intrado, Intrado would consider taking corrective action under the provisions of the ICA. (Tr. Vol. 1, Pp. 259-61)

Mr. Hicks contended that AT&T should not be permitted to impose arbitrary, "non-standard" charges on Intrado for arrangements AT&T has provided previously to other service providers. For example, if AT&T has developed pricing for work for another collocator, then Intrado should be subject to that same pricing rather than special, higher pricing. Mr. Hicks contended that arrangements should no longer be considered non-standard and subject to varying costs based on AT&T's independent determination. He also noted that the FCC has found that if a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures. ILECs bear the burden of demonstrating technical infeasibility. (Tr. Vol. 1, P. 161)

In her rebuttal testimony (Tr. Vol. 2, Pp. 88-90), AT&T witness Pellerin addressed specific language the parties had proposed for the ICA. She noted that both parties had agreed to define a Custom Work Charge as one developed solely to meet the construction requirements of the Collocator, such as a charge for brighter lighting, a circular cage, or a different style of tile within the cage, and to define a Non-Standard Collocation Request (NSCR) as any collocation request that is beyond the terms, conditions, and rates set forth in the physical collocation appendix. However, she objected to an amendment Intrado proposed to the NSCR definition in Section 2.2 of the Physical Collocation Appendix, which would provide that "NSCR charges shall not apply to CLEC requests for collocation or interconnection for which AT&T-(STATE) has existing similar arrangements with other communications service providers. The charges for such similar existing arrangements requested by CLEC shall be in parity with AT&T-(STATE) charges for existing similar arrangements." (Tr. Vol. 2, Pp. 89-90)

Ms. Pellerin argued that the term "similar" was sufficiently vague in the context of physical collocation requests as to be fraught with potential for dispute. While another carrier might have an arrangement that Intrado would characterize as similar to what Intrado was requesting, such an arrangement may actually be quite different and may impose different provisioning costs on AT&T. Another carrier's collocation arrangement may also have been engineered and provisioned several years prior to Intrado's request, making any associated pricing obsolete and inappropriate for application to Intrado. If Intrado objected to AT&T's NSCR charges as being discriminatory, it would have the right to invoke dispute resolution pursuant to the ICA. (Tr. Vol. 2, P. 90)

Ms. Pellerin also objected to Intrado's reference to "interconnection" requests in its proposed amendment to the NSCR section, arguing that the physical collocation appendix should only address collocation requests, not requests for collocation or interconnection. Interconnection should be requested pursuant to the 911, 911NIM, NIM, and/or ITR appendices or via AT&T's North Carolina tariffs. (Tr. Vol. 2, P. 89)

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

The Commission finds using the 13-State Agreement without the proposed additional language provided by Intrado in Section 2.22 of the Physical Collocation Appendix to be appropriate.

MATRIX ISSUE NO. 35 AND FINDING OF FACT NO. 44

Issue: Should the Parties' ICA reference applicable law rather than incorporate certain appendices which include specific terms and conditions for all services?

POSITIONS OF THE PARTIES

INTRADO: In connection with their Ohio negotiations, the Parties have agreed that certain appendices should be included in the ICA rather than indicating that the services governed by those appendices will be provided pursuant to applicable law. Thus, the Parties have agreed to incorporate certain appendices into the Ohio ICA governing services such as local number portability, rights-of-way, number, directory assistance, etc. Intrado seeks to include those same provisions in the Parties' North Carolina ICA. The services governed by the appendices are equally relevant to North Carolina and AT&T has not demonstrated a state-specific reason why the agreed upon terms and conditions for local number portability, numbering, directories, etc. cannot be used in North Carolina. The language agreed upon by the Parties is set forth in AT&T's column. This language should be fully incorporated in the Parties' North Carolina ICA, including the relevant attachments. Simply stating that the 9-state template does not address this issue does not provide Intrado with the terms it views as necessary for the ICA, i.e., the complete language as negotiated for the Parties' Ohio ICA.

AT&T: There is no contract language in dispute; therefore, this issue does not exist if the 9-state template is used. See also Issue 2. The 9-state template does not incorporate any specific attachments by reference. Instead, the 9-state GTCs simply reference all attachments collectively.

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

DISCUSSION AND CONCLUSIONS

Intrado witness Clugy addressed this issue in her direct testimony. (Tr. Vol. 1, P. 112) She testified that Intrado originally had sought to reference "applicable law" rather than applicable appendices. However, in Ohio, the Parties agreed to incorporate certain appendices governing services such as local number portability, rights-of-way, number, and directory assistance into the Ohio ICA. Intrado seeks to include those same appendices in the Parties' North Carolina ICA. AT&T witness Pellerin did not specifically address the disagreement between the parties on this issue, but noted that this issue was resolved between the parties in their Ohio negotiations and would not arise if the 9-state template is used. (Tr. Vol. 2, P. 53)

As the Commission has found that the 13-state template should be used for the ICA between the parties, it must resolve this issue. According to AT&T's position in the Joint Matrix, the 9-state template does not incorporate any specific attachments by reference, but the GTCs simply reference all attachments collectively. Thus the dispute appears to be whether the ICA should incorporate *in toto* or incorporate by reference applicable attachments. Neither party has offered a compelling argument for its position, and the positions differ only by a small degree. Nonetheless, the Commission finds that it may be more efficient for any future review if the attachments are incorporated *in toto* rather than incorporated by reference.

MATRIX ISSUE NO. 36 AND FINDING OF FACT NO. 45

Issue: Should the terms defined in the ICA be used consistently throughout the agreement?

POSITIONS OF THE PARTIES

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

AT&T: AT&T agrees that defined terms should be appropriately capitalized throughout the ICA based on the use of the terms. There may be some occasions where Intrado has capitalized terms that are not used in a manner consistent with the definition. For example, in the 13-state GTC, End User is defined relative to customers of AT&T and Intrado specifically, not end users of other parties generally.

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

DISCUSSION AND CONCLUSIONS

This issue was addressed by Intrado witness Clugy in her direct testimony (Tr. Vol. 1, P. 21) and AT&T witness Pellerin in her rebuttal testimony (Tr. Vol. 2, Pp. 76-7).

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

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

IT IS, THEREFORE, ORDERED as follows:

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

2. That, not later than 30 days after the issuance of this Recommended Order, any interested party to the arbitration may file objections to this Recommended Order consistent with paragraph 3 of the *Arbitration Procedure Order*.

3. That, not later than 30 days after the issuance of this Recommended Order, any interested person not a party to this proceeding may file comments concerning this Order consistent with paragraphs 5 and 6, as applicable, of the *Arbitration Procedure Order*.

4. That, with respect to objections or comments filed pursuant to decretal paragraphs 2 or 3 above, the party or interested person shall provide with its objections or comments an executive summary of no greater than one and one-half pages, single-spaced or three pages, double-spaced containing a clear and concise statement of all

material objections or comments. The Commission will not consider objections or comments of a party or person who has not submitted such executive summary or whose executive summary is not in substantial compliance with the requirements above.

5. That parties or other interested persons submitting a Composite Agreement, objections or comments shall also file those Composite Agreements, objections or comments, including the executive summary required in decretal paragraph 4 above, on an MS-DOS formatted 3.5-inch computer diskette containing the noncompressed files created or saved in Microsoft Word format.

ISSUED BY ORDER OF THE COMMISSION.

This the ___ day of _____, 2008.

NORTH CAROLINA UTILITIES COMMISSION

Renné C. Vance, Chief Clerk