

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Intrado Inc.: :
: **Docket No. 08-0545**
Petition for Arbitration pursuant to :
Section 252(b) of the Communications :
Act of 1934, as amended, to Establish :
an Interconnection Agreement with :
Illinois Bell Telephone Company. :

**REPLY BRIEF OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 761.400 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 761.400, respectfully submits its Reply Brief in the above-captioned matter.

As a preliminary matter, the Staff notes that it will only respond to certain arguments in the parties’ respective Initial Briefs that, in its view, warrant specific response. In doing so, Staff does not waive any positions taken in its Initial Brief or other pleadings in this matter, and fully realleges and reincorporates them.

I. General Considerations

A recurring and fundamental tenet of Intrado’s position is its insistence that, while it is entitled to interconnection with AT&T under Section 251 of the Telecommunications Act of 1996, it should not, as a 911 service provider, be subject to the requirements of Section 251 and of its enabling regulations. Instead, Intrado urges the Commission to “look beyond ... traditional interconnection arrangements” and treat Intrado as a special case, exempt from those requirements, on the basis that 911 services are “unique and different”. Intrado Ex. 2.0 at 23; Intrado IB at 4-5. Intrado argues that adoption of its proposals is necessary to preserve public safety and welfare. Intrado IB at 6.

The Commission should disregard these arguments wherever Intrado raises them. Indeed, the Staff submits that it must do so, for either of two reasons.

First, Section 251 makes absolutely no distinction between interconnection for purposes of providing the 911 services that Intrado proposes to provide, and interconnection for providing any other variety of telephone exchange and exchange access services. See, *generally*, 47 U.S.C. §251(c) (no distinction found in the statute).

Likewise, the FCC's enabling regulations make no such distinction. See 47 C.F.R. §51.305 (no distinction in regulations). Accordingly, Intrado is thus fully subject to the same laws, rules and regulations that govern Section 251 interconnection for all other purposes. Staff Ex. 1.0 at 5, *et seq.*

Intrado argues that Section 253(b) of the federal Act affords the Commission a basis for ignoring the requirements of Section 251(c). This argument is without merit. Section 253 generally prohibits states from imposing statutory or regulatory requirements that effectively prohibit any entity from providing telecommunications services. 47 U.S.C. §253(a). Section 253(b) provides an exemption to Section 253(a), stating that: “[n]othing in this Section shall affect the ability of a State to impose, on a competitively neutral basis ... requirements necessary to ... protect the public safety and welfare[.]” 47 U.S.C. §253(b). Intrado, however, urges the Commission to do something completely different: impose a distinctly non-neutral requirement that gives Intrado rights not afforded to any other CLEC in the state.

Second, even if one is prepared to accept Intrado's argument that, all things equal, Section 253(b) authorizes the Commission to ignore any portion of Section 251(c), Intrado has made no case for the Commission doing so here. Such evidence as is of record points to the current 911 system in Illinois working reliably. Staff Ex. 2.0 at 6, 9; AT&T Ex. 2.0 at 22-23, 31. As such, Intrado is not requesting that the Commission impose competitively neutral requirements necessary to protect the public safety and welfare; it is requesting that the Commission impose requirements that: (a) are demonstrably unnecessary to protect the public safety and welfare, and in fact appear in

at least one instance to potentially compromise the public safety and welfare; and (b) give Intrado favorable treatment to which no other CLEC is entitled.

II. Specific Arbitration Issues

A. Issue 4

In testimony, Staff's position was that AT&T's proposed language with respect to this issue could be read "to indicate that a PSAP or E911 customer served by E911 selective routers may unilaterally revoke, condition or modify the terms of service provided by the 911 system telecommunications providers." Staff Ex. 1.0 at 9. AT&T responded to this by proposing certain compromise language. AT&T Ex. 1.1 at 3; AT&T IB at 18-19. This language resolves Staff's concerns. Accordingly, Staff supports AT&T's proposed language.

B. Issue 5

AT&T argues that Intrado should be required to establish a trunk group to each AT&T tandem for non-911 traffic. AT&T IB at 18-20. Intrado appears willing to do so at such time as traffic volumes warrant, but not before. Intrado IB at 39. Staff takes a middle-ground position, which should be adopted.

As Staff has previously noted, this is an issue with which the Commission has experience. Staff IB at 11-13. Furthermore, and contrary to AT&T's contention, see AT&T IB at 21, the Commission has indeed considered the issue of tandem exhaust in rejecting the position AT&T takes here. In its Arbitration Decision, MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia

Communications Inc.: Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 04-0469 (November 30, 2004) (“MCI Arbitration Decision”), the Commission took notice of Staff’s view that: “[t]andem exhaust is a significant problem in Illinois.” MCI Arbitration Decision at 90. Nonetheless, the Commission adopted Staff’s position requiring MCI to establish direct trunking to an SBC tandem if busy hour traffic reaches the DS-1 level for three consecutive months, describing it as reasonable and not burdensome. Id. at 92. AT&T has presented no additional evidence that requires a different outcome.

C. Issue 7

Intrado argues that, in the case of a “split wire center” in which the boundaries of a wire center, or exchange, fall within the jurisdiction of more than one ETSB, and accordingly customers in the wire center are served by more than one PSAP, AT&T should be required to deliver 911 traffic to Intrado through the use of dedicated direct trunks, rather than through the use of the primary-secondary routing system currently in use. Intrado IB at 40, *et seq.* Intrado’s stated bases for this position are the assertions that: (a) Illinois law requires such dedicated direct trunking; (b) the use of dedicated direct trunking is standard industry practice; and (c) federal “equal in quality” and non-discrimination requirements dictate the use of dedicated direct trunking.¹ Id. at 40-48. The Commission should reject Intrado’s position.

¹ Intrado also contends that dedicated direct trunking is technically feasible, presumably so that it can invoke Section 251(c)(2)(B) for the purposes of locating a POI on its own network. As it clearly cannot, see *infra*, this contention need not be addressed.

As the Staff noted in its Initial Brief, see Staff IB at 16-17, Intrado's proposal may have a substantial, and potentially an adverse, effect upon public safety. From a technical standpoint, it appears that there is no way to accomplish what Intrado wants other than implementing a technical / engineering protocol that Intrado describes as "line attribute routing" and AT&T refers to as "class marking". Staff IB at 14-15. Intrado has offered no evidence suggesting that line attribute routing is currently used anywhere in the United States to route 911 calls; in contrast, this record is replete with evidence that primary / secondary selective routing has been used in Illinois for some time, and has proven to be reliable. Staff Ex. 1.0 at 11; Staff Ex. 2.0 at 6, 9; AT&T Ex. 2.0 at 22-23, 31. Accordingly, the Staff cannot recommend adoption of Intrado's proposal under any circumstances, at least at this point. Intrado seeks to impose an untested method of routing 911 calls upon a substantial number of Illinois citizens (split wire centers being common) for no better reason than to prove a point.

Intrado further alleges that dedicated direct trunking is required by "Illinois law". Intrado IB at 41, *et seq.* In fact, it would be far more accurate to state that dedicated direct trunking is encouraged by Illinois regulation. As Staff demonstrated in its Initial Brief, Staff IB at 17-18, dedicated direct trunking is adopted as a "standard" under Illinois administrative rules, but is not be any means required in all cases. As an aside, Staff is compelled to draw the ALJ's attention to Intrado's disingenuous suggestion that Staff witness Jeffrey H. Hoagg concurs in Intrado's position that 911 traffic should be routed to Intrado via dedicated trunks that bypass the switching and related functions of AT&T's selective routers in all cases. Intrado IB at 41-42. Mr. Hoagg stated, explicitly,

that: “[f]or split wire centers, it appears to [him] the primary/secondary methodology should be retained.” Staff Ex. 1.0 at 8.

Further, where Intrado is the 911 service provider, and AT&T must deliver its 911 traffic to the POI (wherever located), Intrado cannot also dictate the manner in which AT&T delivers such traffic. The Commission has long held, and often reiterated, that each carrier is responsible for the costs of facilities and carrying traffic on its own side of the POI. See, e.g., MCI Arbitration Decision at 81; Arbitration Decision at 22, AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago: Verified Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With Illinois Bell Telephone Company (SBC Illinois) Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 03-0239 (August 26, 2003). That being true, Intrado is not entitled to dedicated direct trunking even under its best-case assumptions.

Intrado’s invocation of historical industry practices is equally without merit. For one thing, historic industry practices are based on ILECs acting in all cases as 911 providers, and thus are predicated upon the nonexistence of 911 system provider competition (specifically Intrado) in this market. Historical industry practices also have the real benefit of complying with Section 251(c) of the Act, which Intrado’s proposal, of course, does not.

The Commission should likewise summarily dismiss Intrado’s contention that the “at least equal in quality” requirement compels a different outcome. The requirement, deriving from Section 251(c)(2)(C), states that ILECs must provide CLECs with interconnection: “that is at least equal in quality to that provided by the [ILEC] to itself or

to any subsidiary, affiliate, or any other party to which the carrier provides interconnection[.]” 47 U.S.C. §251(c)(2)(C). FCC Rule 51.305(a)(3) interprets the language of Section 251(c)(2)(C) as follows:

At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier[.]

47 C.F.R. §51.305(a)(3)

The FCC was even more specific in the Local Competition Order, stating that:

We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party. We agree ... that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks. [W]e further conclude that the equal in quality obligation imposed by section 251(c)(2) is not limited to the quality perceived by end users.

Local Competition Order, ¶1224

In short, the “equal in quality” requirement is intended to prohibit the use of technical standards that frustrate interconnection, rather than requiring absolute reciprocity of obligations in all aspects of interconnection. Intrado’s arguments thus fail. Primary/secondary routing is in general use, and appears to the Staff to be the standard method of routing calls in the case of split wire centers. This being the case, what Intrado seeks is not interconnection that is equal in quality, but rather interconnection that is superior in quality. The FCC rules require no such thing, nor should the Commission in this arbitration.

D. Issue 8

Staff has proposed alternative contract language to resolve this issue. Staff IB at 19-22; Staff Ex. 3.0 at 10-11. AT&T appears to find Staff's proposal acceptable. AT&T IB at 36. Intrado seeks to have this provision made reciprocal. Intrado IB at 51.

Staff concurs with AT&T that the language cannot be made reciprocal without resolving Issues 7(a) and 10(a) in favor of Intrado, in a manner contrary to law as more fully set forth herein.

E. Issue 9(b) – (c)

AT&T urges the Commission to require Intrado to locate any POI at an AT&T end office or tandem, and also to negotiate the location of POIs with AT&T. AT&T IB at 38-39. The state of the law regarding POIs is set forth in greater detail below, but it suffices to say that AT&T's proposals are flatly unlawful. Under Section 251(c)(2)(B) and enabling regulations, a CLEC may locate a POI at any technically feasible point of its election on the ILEC's network, including a number of locations that are clearly not end offices or tandems. 47 U.S.C. §251(c)(2)(b); 47 C.F.R. §51.305(a)(2). Intrado's language should therefore be adopted.

F. Issue 10(a)

Section 251(c)(2)(B) states that incumbent local exchange carriers ("ILECs") are required: "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the [ILEC] network ... at any

technically feasible point within the carrier's network[.]” 47 U.S.C. §251(c)(2)(B). The Federal Communications Commission (“FCC”) has promulgated rule stating that: “An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network ... [a]t any technically feasible point **within the incumbent LEC's network[.]**” 47 C.F.R. §51.305(a)(2)(emphasis added). Each of these provisions makes it abundantly clear that points of interconnection must be located on the ILEC network, unless the ILEC in question agrees otherwise. Intrado's position is, therefore, contrary to law from the outset, as at least one state Commission has determined, with a certain degree of acerbity. See Arbitration Award at 13, Intrado Communications, Inc. and Verizon West Virginia Inc.: Petition for Arbitration filed pursuant to §252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5, W. Va. P.S.C. Case No. 08-0298-T-PC (Reopened); 2008 W. Va. PUC Lexis 3080 at 30-31 (November 14, 2008, Entered); *Arbitrator's decision upheld by PSC*, 2008 W. Va. PUC Lexis 3267 (December 16, 2008) (Intrado position “ludicrous on [its] face”, and “unsupported by law or reason”).

Intrado, however, not deterred by this, advances several arguments regarding why this Commission should ignore the plain requirements of Section 251(c)(2)(B). First, it contends that Section 251(c)(2)(B) was enacted for the benefit of CLECs and not ILECs. Intrado IB at 53, *et seq.* Second, Intrado contends that “Illinois law” requires a conclusion contrary to Section 251(c)(2)(B). Id. at 56. Third, Intrado argues that ILECs, as the entities historically providing 911 service to ETSBs / PSAPs, have always required CLECs to deliver traffic to the ILEC network, so that when a CLEC provides 911 service to an ETSB / PSAP, some notion of fairness dictates that the ILEC deliver

the traffic to a POI on the CLEC network. Id. at 56, *et seq.* Fourth, Intrado argues that its proposal is consistent with industry recommendations and guidelines. Id. at 61-3. Fifth, and somewhat obscurely, Intrado contends that LATA boundaries are irrelevant to the provision of 911 service, so apparently AT&T is not absolutely prohibited from carrying traffic across LATA boundaries to POIs on Intrado's network. Id. at 63. Sixth, Intrado argues that its proposal does not disadvantage third-party carriers. Id. at 64.

Staff's major, and general, objection to all of these arguments is that they are little more than special pleading. As noted above, the federal statute and regulation are clear: the POI must be located on the ILEC network. Intrado, having elected to seek Section 252 arbitration, is bound by the unambiguous requirements of Section 251(c)(2)(B), and cannot avoid its implications by claiming that the world would be a better and fairer place if the statute did not specifically prohibit the outcome Intrado desires. In essence, Intrado wants the Commission to find an exemption, applicable to 911 service providers, from the requirement that the POI be on the ILEC network. Neither Section 251(c)(2)(B) of the federal Act nor Section 51.305(a)(2) contain anything that can be remotely characterized as such an exemption.

In resolving this issue, which after all was brought before it by Intrado, the Commission is obliged to: "ensure that such resolution ... meet[s] the requirements of [S]ection 251, including the regulations prescribed by the Commission pursuant to section 251[.]" 47 U.S.C. §252(c)(2). Intrado seeks a resolution of Issue 10(a) that would directly violate the requirements of Section 251(c)(2)(B) and its associated regulations. Accordingly, Intrado's proposal is simply unlawful, and cannot be adopted.

Intrado attempts to induce the Commission to read Section 251(c)(2)(B) out of existence by arguing in essence that, in light of the fact that the statute was purportedly enacted for the benefit of CLECs, it should be read in whatever manner might confer the greatest advantage upon them. Intrado IB at 53, *et seq.* In support of this assertion, it is compelled to engage in an extremely convoluted reading of several FCC orders.

The FCC's Local Competition Order does not, contrary to Intrado's fond hope, support the proposition that a CLEC may require an ILEC to interconnect with it at any location that the CLEC designates. In fact, the Local Competition Order states that: "[S]ection 251(c)(2) obligates incumbent LECs to provide interconnection **within their networks** at any 'technically feasible point.'" *First Report And Order*, ¶192, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, FCC No. 96-325, CC Docket No. 96-98; CC Docket No. 95-185, 11 FCC Rcd 15499; 1996 FCC LEXIS 4312; 4 Comm. Reg. (P & F) 1 (August 8, 1996) (hereafter "Local Competition Order") (emphasis added).

In further confirmation that Section 251(c)(2)(B) required interconnection on ILEC networks, the FCC imposed the burden of proving technical infeasibility on ILECs, noting that:

Incumbent LECs possess the information necessary to assess the technical feasibility of interconnecting **to particular LEC facilities**. Further, incumbent LECs have a duty to make available to requesting carriers general information **indicating the location and technical characteristics of incumbent LEC network facilities**. Without access to such information, competing carriers would be unable to make rational network deployment decisions and could be forced to make inefficient use of their own and incumbent LEC facilities, with anticompetitive effects.

Local Competition Order, ¶205 (emphasis added)

Were it the case that CLECs could require the location of POIs on their networks, this requirement would undoubtedly be reciprocal, since the reverse is obviously true: CLECs have the information necessary to assess the technical feasibility of interconnecting with their own facilities.

The FCC further noted that it had sought comment on the discrete issue of “which points **within an incumbent LEC's network** constitute ‘technically feasible’ points for purposes of section 251(c)(2)[.]” *Id.*, ¶207 (emphasis added). It further noted that: “Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select **the points in an incumbent LEC's network** at which they wish to deliver traffic.” *Id.*, ¶209 (emphasis added). Accordingly, while the Local Competition Order, as Intrado suggests, affords CLECs the “right” to interconnect with ILECs, that right is limited to the right to interconnect with ILECs on the latter’s networks.

Other portions of the Local Competition Order lead inevitably to the same conclusion. For example, the FCC found that it could require so-called “meet-point” interconnection under Section 251(c)(2). Local Competition Order, ¶553. In so finding, it stated as follows:

Meet point arrangements (or mid-span meets), for example, are commonly used between neighboring LECs for the mutual exchange of traffic, and thus, in general, we believe such arrangements are technically feasible. [fn] Further, although the creation of meet point arrangements may require some build out of facilities by the incumbent LEC, we believe that such arrangements are within the scope of the obligations imposed by sections 251(c)(2) and 251(c)(3). **In a meet point arrangement, the "point" of interconnection for purposes of sections 251(c)(2) and 251(c)(3) remains on "the local exchange carrier's network"** [fn] (e.g., main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of

interconnection. [fn] In a meet point arrangement each party pays its portion of the costs to build out the facilities to the meet point.

Id. (emphasis added; footnotes omitted)

In short, although recognizing that meet-point interconnection might require an ILEC to engage in “limited” build out of facilities from the trunk-side of a switch or from an MDF, the FCC was again careful to make it utterly clear that, even in these circumstances, the POI would remain on the ILEC network. Moreover, such a “limited” build-out requirement can scarcely include requiring an ILEC to build out to an Intrado selective router. By no stretch of the imagination can such a requirement be read to compel the conclusion that an Intrado selective router is a point on an ILEC network; such an interpretation would be bizarre.

Further, contrary to Intrado’s assertions, the Virginia Arbitration Order supports the conclusion that interconnection must be on the ILEC network. *See, generally, Memorandum Opinion and Order, In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, DA 02-1731, CC Docket Nos. 00-218, 00-249, and 00-251 (rel. July 15, 2002) (hereafter “Virginia Arbitration Order”). In characterizing the Virginia Arbitration Order, Intrado argues that:

To provide competitors with further benefits and ease of entry, the FCC determined that competitors have the right to establish only one interconnection point with the ILEC, which protected competitors from ILEC demands to interconnect at multiple points on the ILEC network. [fn] The FCC found that the single point of interconnection rule benefits the *competitor* by permitting it to interconnect for delivery of its traffic at a single point on the ILEC’s network. [fn] While the single point of interconnection rule was available to competitors, the FCC expressly recognized competitors were not precluded from establishing an

alternative arrangement, such as one that permitted the ILEC to deliver its traffic to a different point or additional points that were more convenient for the incumbent than the single point designated by the competitor. [fn] Indeed, the FCC recognized that, while the Act *permits* a competitor to choose where it will deliver its traffic, “carriers do not always deliver originating traffic and receive terminating traffic at the same place.”[fn] The FCC’s implementing regulations were developed based on its recognition that the framework established by Section 251(c) was established for the benefit of the competitor and could be altered if the competitor chose to forego its rights.

Intrado IB at 54-55 (footnotes omitted)

Intrado’s characterization is incorrect and self-interested. Nothing in the passage of the Virginia Arbitration Order cited by Intrado even hints at the notion that an ILEC can be required to interconnect with a CLEC on the CLEC’s network. The FCC stated that:

The "single point of interconnection" rule benefits the competitive LEC by permitting it to interconnect for delivery of *its* traffic to the incumbent LEC network at a single point. **It does not preclude the parties from agreeing that the incumbent may deliver its traffic to a different point or additional points that are more convenient for it.**

Virginia Arbitration Order, ¶71 (emphasis added)

In short, the passage cited by Intrado permits the use of a POI on the CLEC network where the parties agree to it. Intrado takes this finding, and attempts to turn it into a unilateral right to locate certain POIs on its own network, despite opposition by the ILEC. It goes without saying, however, that no such agreement exists here, since the matter is before the Commission for arbitration. That being the case, the Virginia Arbitration Order has no application here, and Intrado’s reliance on it is misplaced.

Intrado appears to make much of the notion that not requiring AT&T to carry traffic to a POI on the Intrado network would constitute unlawful discriminatory conduct. Intrado IB at 55. Even if such a requirement is discriminatory, Staff is compelled to note

that it is nonetheless quite lawful, to the point of being specifically provided for by federal statute. This being the case, Intrado's discrimination arguments are simply untenable and should be rejected.

Intrado next argues that Illinois law requires the POI to be located on its network. Intrado IB at 56. Specifically, it refers to Commission Rule 725.500(x). Id.; see also 83 Ill. Adm. Code 725.500(x). This argument, however, fails because of the clear and unambiguous federal statutory requirement that the POI be located on the ILEC's network. State administrative rules do not constitute a legal justification to disregard a federal law.

Further, Section 725.500(x) need not be read as expansively as Intrado urges.

The Section in question provides, in its entirety, that:

Each telecommunications carrier shall adopt practices and procedures to deliver 9-1-1 calls to the appropriate selective router based on the originating caller's location and assigned NPA for the 9-1-1 service provider's selective router coverage area.

83 Ill. Admin. Code 725.500(x)

This regulation does not, on its face, require that a carrier deliver traffic in the manner sought by Intrado. The rule does not, by its specific terms, require a carrier to deliver traffic to the selective router, but instead to develop practices and procedures whereby this can safely and reliably occur. Traffic delivered by AT&T to a POI on its network can thereafter be routed by Intrado without difficulty.

Intrado next contends that, since ILECs have historically required competitors to deliver 911 traffic to ILEC networks where the ILEC is the 911 service provider, AT&T should be required to deliver 911 traffic to Intrado when the reverse is true. To buttress

this contention, Intrado reiterates its “at least equal in quality” argument as standing for the proposition that, where AT&T requires the POI to be on its network, “equal ... quality” requires that Intrado be permitted to do the same. Intrado IB at 59.

This argument is facially defective because, again, it must, to gain any traction whatever, assume away the existence of Section 251(c)(2)(B) and 47 C.F.R. §51.305(a)(2). However, whether or not Section 251(c)(2)(B) is rational, fair, just, or calculated to result in intelligent network design or rational cost allocation is entirely beside the point. The Commission is required to base its decision of this arbitration on the undoubted fact that Section 251(c)(2)(B) applies in this proceeding and requires Intrado to deliver its traffic to a POI on AT&T’s network, regardless of what AT&T has historically required others to do.

The Commission can summarily dismiss Intrado’s contention that the “at least equal in quality” requirement compels a different outcome. The requirement, deriving from Section 251(c)(2)(C), states that ILECs must provide CLECs with interconnection: “that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection[.]” 47 U.S.C. §251(c)(2)(C). Intrado argues that where it is the provider of 911 services, the POI must be located on its network if it is not to be subjected to interconnection that is inferior in quality. Intrado IB at 59.

However, it is well established that the “equal in quality” requirement has nothing whatever to do with the location of the POI. As an initial matter, Intrado’s construction of the “equal in quality” requirement would read Section 251(c)(2)(B) out of existence. As Staff noted in its Initial Brief, this is precisely contrary to well-established rules of

statutory construction, which require that the specific and general terms of a statute conflict – and Intrado contends that subsections (c)(2)(B) and (c)(2)(C) do indeed conflict – the specific provision will prevail. Staff IB at 26; see *a/so McDonnell v. Cisneros*, 84 F.3d 256, 261; 1996 U.S. App. Lexis 11662 at 16-7; 70 Fair Empl. Prac. Cas. (BNA) 1459; 68 Empl. Prac. Dec. (CCH) P44,065 (7th Cir. 1996); Winnebago County v. Davis, 156 Ill. App. 3d 535, 539; 509 N.E.2d 143, 146; 1987 Ill. App. Lexis 2595 at 10; 108 Ill. Dec. 717 (2nd Dist. 1987).

Further, as noted above, the “equal in quality” requirement is intended to prohibit the use of technical standards that frustrate interconnection, rather than requiring absolute reciprocity of obligations in all aspects of interconnection. Intrado’s arguments thus fail.

Intrado next contends that its proposal is consistent with industry recommendations and guidelines. Intrado IB at 61, *et seq.* Again, this argument must fail because Intrado seeks to use general industry guidelines to avoid the consequences of a specific federal statutory requirement. Further, the Staff is compelled to note that Intrado’s allegiance to industry guidelines appears to be quite conditional; it advances its line attribute routing scheme in the face of industry guidelines that discourage the use of that method of call routing. Staff IB at 15, 17. Accordingly, its reliance on industry standards can be given little weight.

Intrado further contends that LATA boundaries do not apply to 911 traffic. Intrado IB at 63. Therefore, Intrado argues, AT&T would not be compelled to violate any law even if it were required to deliver 911 traffic to a POI on Intrado’s network that was not in the same LATA. Id. This contention, while apparently correct, is of no importance

whatever, since it assumes that AT&T can be required to deliver 911 traffic to a POI on Intrado's network whether or not it was in the same LATA. As has been seen, this is simply not the case. Accordingly, this argument fails as well.

G. Issue 12

Neither AT&T nor Intrado appear to entirely accept Staff's view that, in the event an ETSB / PSAP requests PSAP to PSAP transfer capability, such capability should be addressed in the form of an ICA amendment. AT&T takes the view that the matter should be addressed outside the scope of the ICA. AT&T IB at 47. Intrado argues that the ICA should contain a framework for provisioning such capability without further agreement. Intrado IB at 69-70.

In the event that the Commission determines that PSAP to PSAP transfer capability falls within the ambit of Section 251(c), the Commission should require the parties – to the extent necessary – to enter into an ICA amendment to provide this service as requested by one or more ETSBs / PSAPs.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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