

respect to the disputed contract language concerns ALI steering tables. The function of an ALI steering table is to provide the PSAP with a critical bit of information for a wireless or VoIP call; i.e., which ALI database should be queried in order to determine the location associated with the calling number (Tr. 164, 165).

A telecommunications service, as defined by the 1996 Act is defined as "...the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available to the public..."⁴⁷ U.S.C §153(46). The 1996 Act also defines telecommunications as "...transmission ... of information of the user's choosing..."⁴⁷ U.S.C. §153(43). Inasmuch as the user of 9-1-1 presumably chooses to have the PSAP receive the information needed for the PSAP to determine the caller's physical location, the delivery of information to the PSAP which makes this possible is a telecommunication service.³ In a wireline 9-1-1 call, the information of "which ALI database to query" is provided as part of delivering a 9-1-1 call in the context of physical interconnection. For those calls which require an ALI steering database (non-PSTN calls), the ALI steering database is required to provide that same information. On this basis, the Commission concludes that ALI steering is clearly part of a telecommunications service.

In addition, the language in question discusses specifically the coordination of ALI steering tables in the context of PSAP-to-PSAP call transfer. There are two possible ways of viewing a PSAP-to-PSAP call transfer. It can be viewed as a telecommunication between two PSAPs, or as a part of the process of a 9-1-1 call. In the latter instance, the Commission determines that the ALI steering function is part of a telecommunication service. In the former instance, the ALI steering table information is part of the information which the transferring PSAP wishes to convey to the receiving PSAP. This is consistent with the definition of "telecommunications" and clearly constitutes "transmission of information between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

Verizon has argued that the proposed language will require it to "maintain" another 9-1-1 provider's steering tables. The Commission is not convinced that a requirement to "work cooperatively to maintain" the steering tables is different from any other aspect of interconnection that requires cooperation and coordination.

Therefore, the Commission concludes that the language in question refers to a telecommunications service and, thus, is appropriate for inclusion in an interconnection

³ While the user may not specify the "points" that information is transmitted "between and among," it is only because that function is transparent to the user. A 9-1-1 system where it was not transparent to the user would actually be less effective and more cumbersome than one in which information on the caller's location is not available.

agreement. The parties are directed to incorporate Intrado's proposed language in the interconnection agreement to be filed in this proceeding.

Issue 8 Should certain definitions related to the parties' provision of 9-1-1/E9-1-1 service be included in the interconnection agreement and what definitions should be used?

Intrado notes that the disputes between the parties with respect to the definition of "9-1-1/E9-1-1 Service Provider" and the definition of "POI" deal with the location of the POI and are addressed under Issue 1.

With regard to the definition of ANI, Intrado proposes that the term be defined as the "telephone number associated with the access line from which a call originates." Intrado points out that this is the same definition as that set forth in the NENA Master Glossary (Intrado Initial Br. at 51, citing *NENA Master Glossary of 9-1-1 Terminology*, NENA-00-001, Version 11 [May 16, 2008], at 17). Intrado states that it proposed that this term and definition be included in the interconnection agreement because the term is used in Intrado's proposed language in other sections of the interconnection agreement (*Id.*). Intrado opines that, while Verizon does not appear to have an issue with the substance of the definition, it does not agree with Intrado's proposed language in other sections of the interconnection agreement and, thus, does not think that inclusion of the term is necessary (*Id.*).

With respect to the definition of "9-1-1 Tandem/Selective Router," Intrado proposes that the term be defined as "switching or routing equipment that is used for routing and terminating originating end user 9-1-1/E9-1-1 calls to a PSAP and/or transfer of 9-1-1/E9-1-1 calls between PSAPs." Intrado submits that its proposed definition accurately reflects the functions that will be performed. Intrado notes that the FCC has stated that a selective router receives 9-1-1/E9-1-1 calls and forwards those calls to the PSAP that has been designated to serve the caller's area (*Id.* citing *Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, [2005] at ¶15). Intrado states that it is well-established that selective routers are used to transfer 9-1-1/E9-1-1 calls between PSAPs (*Id.*).

Intrado suggests that Verizon's proposed language for "Verizon 9-1-1 Tandem/Selective Router" and "Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center" should be rejected, as these two Verizon-proposed definitions are unnecessary and repetitive of the general definitions for these terms (*Id.* at 52). Intrado notes that, inasmuch as the terms "9-1-1 Tandem/Selective Router" and "Interconnection Wire Center" are already defined in the interconnection agreement, there is no reason for separate, Verizon-specific definitions for these terms (*Id.*).

With respect to the definitions in dispute, Verizon proposed as follows:

9-1-1 Tandem/Selective Router- Switching or routing equipment that is used for routing 9-1-11/E9-1-1 calls. In Verizon's network, a 9-1-1 Tandem/Selective Router receives 9-1-1/E9-1-1 calls from Verizon's end offices and routes these 9-1-1/E9-1-1 calls to a PSAP.

Verizon 9-1-1 Tandem/Selective Router- A 9-1-1 Tandem/Selective Router in Verizon's network which receives 9-1-1/E9-1-1 calls from Verizon end offices and routes these 9-1-1/E9-1-1 calls to a PSAP.

Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center- A building or portion thereof which serves as the premises for a Verizon 9-1-1 tandem/Selective Router.

Verizon opines that the source of the parties' disputes about the definitions raised in Issue 8 centers on Intrado's network architecture proposal (Verizon Initial Br. at 38). Verizon maintains that Intrado's definitions for Issue 8 must be rejected inasmuch as they incorrectly assume that Intrado is entitled to select POIs on its own network and that Verizon must interconnect with Intrado by means of direct trunks supplied by Verizon that would bypass Verizon's selective routers (*Id.*).

Verizon maintains that Intrado's language does not accurately reflect the structure of Verizon's network and the location and operation of 9-1-1 Tandem/Selective Routers in Verizon's network. Verizon submits that its own definitions of "9-1-1 Tandem/Selective Router" and "Verizon 9-1-1 Tandem/Selective Router" establish that, in Verizon's network, the 9-1-1 Tandem/Selective Router is located between the Verizon end office and the PSAP and may be used to route calls from the Verizon end office to Intrado's POI (*Id.*). Verizon maintains that Intrado's opposition to Verizon's language is premised on Intrado's incorrect position that Verizon must forgo using its selective routers to send 9-1-1 calls to Intrado-served PSAPs (*Id.*).

Verizon submits that its proposed definition of "Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center" is appropriate inasmuch as one of the POIs on Verizon's network is specifically stated in the 9-1-1 Attachment to be a "Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center."

ISSUE 8 ARBITRATION AWARD

As noted by Intrado, the following six definitions are in dispute between the parties: (1) ANI; (2) 9-1-1/E9-1-1 Service Provider; (3) 9-1-1 Tandem/Selective Router; (4) POI ; (5) Verizon 9-1-1 Tandem/Selective Router; and (6) Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center. As noted by Verizon, each of the glossary definitions identified in Issue 8 is referenced in one or more of the draft interconnection agreement

sections in Issues 1, 2 and 5. Therefore, the resolution of these definitional issues is driven by, and must be consistent with, this Commission's decisions on Issues 1, 2 and 5.

With regard to these issues, this Commission has determined that Verizon will be required, where Intrado is the provider for a given PSAP, to deliver its customers' 9-1-1 calls destined for that PSAP to a POI on Intrado's selective router (or network) for termination (Issue 1). The Commission has also determined that Intrado's POI for this purpose must be located within Verizon's service territory (Issue 1). Also, the Commission has concluded that Verizon may engineer its network on its side of the POI as it sees appropriate, and bears the cost of doing so (Issues 1 and 5). Finally, the Commission found that the interconnection agreement should include the basic framework for PSAP-to-PSAP call transfer (Issue 2).

While, based on the record in this proceeding, it appears that Verizon intends to use its selective router facilities to route 9-1-1 calls to Intrado where Intrado is the designated provider for the destination PSAP, this may not be how Verizon chooses to operate in the future. Verizon has already indicated on the record in this proceeding that it is in the process of rolling out a new architecture for selective routing (Tr. 162, 163). Given that this interconnection agreement should ideally outlast the current architecture, this Commission favors a more generic definition of a "9-1-1 Tandem/Selective Router." Therefore, the Commission finds that, rather than either of the parties' proposed language, the definition to be utilized should be as follows: "Switching or routing equipment that that is used for routing 9-1-1/E9-1-1 calls and/or providing the transfer of 9-1-1/E9-1-1 calls between PSAPs."

As to the more specific definitions proposed by Verizon to be applied to "Verizon 9-1-1 Tandem/Selective Router" and "Verizon 9-1-1 Tandem/Selective Router Interconnection Wire Center," the Commission agrees with Intrado that establishing a separate definition for those owned by Verizon adds no useful specificity. As to Verizon's claim that it is unlawful for it to be prohibited from using its selective routers to send 9-1-1 calls to Intrado-served PSAPs, it needs to be made clear that this Commission has already established that a PSAP would have only one carrier for each type of 9-1-1 call (wireline, wireless, or VoIP). If that carrier is Intrado, then Verizon must deliver its applicable 9-1-1 calls to Intrado for termination to the relevant PSAP, though it may engineer its network however it chooses, consistent with Issue 1. By reaching this determination, the Commission is not prohibiting Verizon from utilizing its selective routers.

Finally, as is discussed in Issue 1, the parties are instructed to include the phrase "with ANI" where applicable. Therefore the Commission will also instruct the parties to include the definition of ANI proposed by Intrado, as it is the definition set forth in the NENA Master Glossary and is, therefore, consistent with the usage of the term generally.

Issue 9 Should 9-1-1 Attachment Section 2.5 be made reciprocal and qualified as proposed by Intrado?

Verizon proposed the following language in 9-1-1 Attach. §2.5, that would allow it to directly deliver 9-1-1/E9-1-1 calls to one of Intrado's PSAP customers:

Nothing in this agreement shall be deemed to prevent Verizon from delivering 9-1-1/E9-1-1 calls directly to a PSAP for which Intrado Comm is the 9-1-1/E9-1-1 service provider.

Further, in an attempt to address concerns raised by Intrado, Verizon also proposed the following language in 9-1-1 Attach. §2.6, that would allow Intrado to directly deliver 9-1-1/E9-1-1 calls to one of Verizon's PSAP customers:

Nothing in this agreement shall be deemed to prevent Intrado from delivering by means of facilities provided by person other than Verizon, 9-1-1/E9-1-1 calls directly to a PSAP for which Verizon is the 9-1-1 service provider.

Intrado objects to Verizon's proposed language contained in 9-1-1 Attach. §§2.5 and 2.6. Intrado opines that the proposed language should be rejected based on its belief that this is a matter outside of the scope of a Section 251(c) interconnection agreement (Intrado Initial Br. at 53). At a minimum, Intrado avers that the adopted language should reflect that either party may only be permitted to directly deliver 9-1-1/E9-1-1 calls to the other party's PSAP customer if the PSAP customer specifically authorizes the requesting party to do so (*Id.*). In support of its position, Intrado points out that there may be instances where a PSAP may select more than one 9-1-1/E9-1-1 service provider. For example, Intrado recognizes that a PSAP may choose to have both Verizon and Intrado provide 9-1-1/E9-1-1 services (*Id.* citing Intrado Ex. 2, at 60; Tr. 86). To the extent that this scenario exists, Intrado opines that the adopted language should reflect that such arrangements are to be driven by the PSAP, and not pursuant to Verizon's unilateral mandates (*Id.* citing Tr. 87).

While Verizon believes that its proposed §2.6 addresses Intrado's concerns related to reciprocity, Verizon rejects Intrado's proposed clarification that the interconnection must be authorized by the PSAP. Specifically, Verizon submits that whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and is outside the scope of the parties' agreement. Verizon considers Intrado's proposed language to be an unwarranted intrusion upon its rights with respect to third parties (Verizon Initial Br. at 39, citing Verizon Ex. 1, at 68, 69).

ISSUE 9 ARBITRATION AWARD

Based on a review of the parties' stated positions, the Commission agrees with Verizon that the issue of whether party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and is outside the scope of the interconnection agreement before the Commission in this proceeding. In reaching this determination, the Commission recognizes that a PSAP may choose to enter into agreements with two separate 9-1-1/E9-1-1 providers based on its own individual needs and situation. The specifics of such arrangements extend beyond the scope of this arbitration proceeding. Therefore the Commission agrees with Intrado that Verizon's proposed language in 9-1-1 Attach. Sections 2.5 and 2.6 should be deleted.

Issue 10 What should Verizon charge Intrado for 9-1-1/E9-1-1 related services and what should Intrado charge Verizon for 9-1-1/E9-1-1 related services?

Issue 12 Can Verizon require Intrado to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities, and arrangements?

Intrado proposed the following language:

9-1-1 [Attach.] §1.7.3 ...When Intrado Comm is the 9-1-1/E9-1-1 Service Provider, Verizon shall pay to Intrado Comm the full Intrado Comm rates and charges (as set out in this Agreement) for interconnection at the POI(s) established by the Parties on Intrado Comm's network for any services, facilities and/or arrangements provided by Intrado Comm for such interconnection.

Additionally, Intrado Comm proposed Pricing Appendix B, captioned "Intrado Comm. Services"

As the first portion of Issue 10 (what Verizon may charge Intrado) focuses on whether and how the agreement may reference the parties' tariffs, this aspect will be addressed under Issue 11, which deals more directly with the issue of tariffs.

With regard to the rates that Intrado is proposing to charge Verizon under Issue 10, Intrado states that it should have reciprocal rights to charge Verizon "port" or "termination" charges when Verizon interconnects with its network. Intrado further states that, while it believes that Verizon imposes trunk port or termination charges on carriers seeking to terminate 9-1-1/E9-1-1 service traffic on Verizon's network, it notes that these

charges may not be separately stated by Verizon but, rather, may be contained in other rates Verizon imposes on competitors for 9-1-1/E9-1-1 services (Intrado Ex. 1, at 29). Intrado states that its rates are similar to those charged by Verizon for trunk ports and connections to its network (Joint Issues Matrix at 25, 26).

In addition, Intrado posits that, while Section 252 authorizes state commissions to determine whether the rates to be charged by the ILEC are just and reasonable, it provides no authority for a state commission to adjudicate a competitor's rates during a Section 252 proceeding. Intrado states that, to the extent that Verizon wishes to challenge Intrado's proposed rates, it should file a separate proceeding. (Intrado Initial Br. at 56, citing Virginia Arbitration Order at ¶588).

Further, Intrado states that its rates should not be capped at the rate that Verizon charges for "comparable" services (Joint Issues Matrix at 31). Intrado submits that neither federal nor state law requires a competitor's rates, aside from intercarrier compensation, to be capped at the rates charged by the ILEC. Additionally, Intrado asserts that there is no requirement that Intrado's rates should be "benchmarked" against Verizon's rates given that Verizon's argument for "benchmarking" is based on intercarrier compensation rates (Intrado Initial Br. at 60). Further, Intrado points out that the FCC's Wireline Competition Bureau, as well as several state commissions, have already rejected Verizon's argument (*Id.* at 61). Finally, Intrado argues that this Commission has already made clear that Intrado's rates are "reasonable" (*Id.* at 57).

Verizon notes that the parties have agreed that the transport and termination of 9-1-1/E9-1-1 calls will be handled on a non-charged basis. Thus, according to Verizon, there should be no language in the interconnection agreement that would allow Intrado to bill Verizon any charges for the transport and termination of 9-1-1/E9-1-1 calls from Verizon end users to PSAPs served by Intrado or for the transport and termination of 9-1-1/E9-1-1 calls transferred from Verizon-served PSAPs to Intrado-served PSAPs (Joint Issues Matrix at 27).

In addition, Verizon maintains that, since Intrado is obligated to interconnect with Verizon at a technically feasible POI on Verizon's network, there should also be no Intrado charges for Intrado-provided facilities that carry 9-1-1/E9-1-1 calls, and no charges for interconnection to the Intrado network (*Id.* at 27, 28). Verizon also maintains that the rates Intrado has proposed for what it calls "port" or "termination" charges (but which are not specified as such in the agreement) are completely arbitrary and unsupported by any cost or other evidence. Verizon states that it is not clear from Intrado's proposed language what activities these charges cover, or how such charges were developed (*Id.* at 28, 29).

Verizon proposes language in the Pricing Attachment that would require Intrado to charge no more than Verizon charges Intrado for the same services, facilities, and arrangements (Verizon Ex. 1, at 76, 77). Verizon notes that, as an ILEC, its rates are subject

to Commission scrutiny and, therefore, are subject to a presumption of reasonableness (Verizon Initial Br. at 44). Verizon states that, if Intrado wants to charge Verizon higher rates, Intrado should be required to show, based on its costs, that its proposed rates are reasonable. Verizon observes that the practice of benchmarking CLEC rates to ILEC rates is a common approach to preventing CLEC pricing abuses used by this Commission (Joint Issues Matrix at 31).

Verizon observes that rate parity provisions are standard terms in Verizon's interconnection agreements, and benchmarking to the ILEC's rates is quite common in a number of areas. Verizon notes that CLECs must charge ILECs the same reciprocal compensation rates as the ILEC charges the CLEC, unless the CLEC can justify higher rates based on its costs. In addition, according to Verizon, the FCC and numerous states, including Ohio, have requirements capping CLEC access rates at the rate of the competing ILEC (Verizon Ex. 1, at 77, 78).

ISSUES 10 AND 12 ARBITRATION AWARD

As to whether Intrado can charge Verizon for ports while, with respect to its own rates, Verizon differentiates between transport and termination charges for 9-1-1, and facilities charges, the ILEC fails to recognize this same distinction with respect to Intrado. Specifically, Verizon indicates that Intrado will have to pay for a POI on Verizon's network (Tr. 135), and will have to pay for any facilities it obtains from Verizon to transport calls from that POI to Intrado's network (Joint Issues Matrix at 27, 28). At the same time, Verizon notes that the parties have agreed not to charge for transport or termination of 9-1-1 traffic (Verizon Ex. 1, at 72, 73). This recognizes a distinction between transport and termination, for which Verizon will not charge, and facilities, for which Verizon will charge. However, when discussing Intrado's port charges to Verizon, Verizon appears to ignore this distinction and, instead, inappropriately concludes that, because the parties have agreed not to charge for transport or termination, Intrado should also not charge for switch port facilities (*Id.*).

Regarding the rates Intrado can charge, while it is indeed true that CLEC rates are regularly compared to, or capped at, the rates of the ILEC with which they compete, the requirement to do so is limited to intercarrier compensation (i.e. switched access and reciprocal compensation) and does not extend to the issues in dispute in this proceeding. The Commission observes that, despite Verizon's statement that benchmarking is "quite common in a number of areas," the company has identified only a single example from the New York Public Service Commission that applies such benchmarking to the provision of facilities, such as switch ports. While the state of New York may have an "established practice" of benchmarking facilities charges to those of the ILEC, Ohio does not, and we see no compelling reason to establish such a practice in this case.

Intrado contends that Section 252 provides no authority for a state commission to adjudicate a competitor's rates during a Section 252 proceeding. In addressing this contention, the Commission points out that it is simply exercising its authority pursuant to Sections 252(b)(1) and 252(b)(4) to consider those issues presented for arbitration and to determine the reasonableness of the resulting interconnection agreement terms and conditions. Specifically, Verizon has presented for arbitration the issue of Intrado's proposed port charges. Therefore, this Commission clearly has the authority in the context of this proceeding to determine appropriate rates for Intrado's port charges, notwithstanding the fact that the Commission is not relying upon the pricing standards set forth in Section 251(d).

While maintaining that any attempt by Verizon to challenge the appropriateness of Intrado's rates lies outside this arbitration proceeding, Intrado, at the same time, cites other arbitration decisions of this Commission to support the contention that its proposed rates are reasonable (Intrado Initial Br. at 56, 57; Intrado Reply Br. at 16, each citing 08-537, Arbitration Award at 21). The Commission finds it contradictory for Intrado to first claim that this Commission has no authority to decide the question of the appropriateness of the proposed rates, but then cite to this Commission's previous decisions in support of its contention that its proposed rates are reasonable. If it wishes to cite this Commission's prior arbitrations to support the reasonableness of its rates, it cannot then argue that the Commission cannot arbitrate those rates.

The Commission, therefore, finds that the proposed language should be incorporated in the final interconnection agreement as follows:

9-1-1 Attachment Section 1.7.3 - Intrado's proposed final sentence beginning "When Intrado Comm is the 9-1-1/E9-1-1 Service Provider..." and ending "...for such interconnection."

Pricing Attachment Appendix B, captioned "INTRADO COMM SERVICES" should be adopted.

Finally, as noted above, the issue of the inclusion of tariff references in the agreement is discussed at length in the context of Issue 11.

Issue 11 Should all "applicable" tariff provisions be incorporated into the agreement? Should tariffed rates apply without a reference to the specific tariff? Can tariffed rates automatically supersede the rates contained in Pricing Attachment, Appendix A without a reference to the specific tariff? Should the Verizon proposed language in Pricing Attachment Section 1.5 with regard to "TBD" rates be included in the agreement?

Intrado identifies the following three main disputes raised in the context of this issue:

- (1) The incorporation of "applicable" tariff provisions into the agreement.
- (2) Intrado's concern that tariff charges should not be permitted to trump those interconnection-related charges in the interconnection agreement, and that any charges imposed by either party should be specifically identified in the agreement.
- (3) Rates marked as "TBD" in the Pricing Attachment should not be superseded by tariffed rates.

(Intrado Initial Br. at 58).

Intrado states that, in light of its desire for certainty with respect to the parties' relationship, it cannot agree to "unspecified" terms and conditions that Verizon may later determine are 'applicable' to the services being offered in the interconnection agreement (*Id.*). While Intrado recognizes that there may be non-Section 252(d)(1) services that Intrado will purchase from Verizon for which a tariff is the appropriate pricing mechanism, it maintains that, if a tariffed rate is the appropriate rate for a certain service, the applicable tariff should be set forth in the parties' interconnection agreement, rather than a generic reference to "applicable" tariffs (Intrado Initial Br. at 55).

Additionally, Intrado references a West Virginia arbitration decision and a FCC Wireline Competition Bureau arbitration decision as support for its argument (Intrado Initial Br. at 59, citing Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc.* West Virginia Administrative Law Judge Award at 24; and *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 et al.*, Arbitration Order at ¶608).

Intrado posits that state retail tariffs governing 9-1-1/E9-1-1 services are not appropriate for Verizon's provision of interconnection-related services to Intrado under the interconnection agreement, and that any interconnection-related charges to be assessed on Intrado should be developed pursuant to Sections 251/252 and set forth in the interconnection agreement (Intrado Initial Br. at 54) unless those services are subject to non-Section 252 pricing (*Id.* at 55). Intrado notes that Section 252(d) sets forth the pricing standards for three categories of charges: (1) interconnection and network element charges, (2) transport and termination charges, and (3) wholesale telecommunications services charges (*Id.* at 54, 55). Intrado further states that Verizon cannot use tariffs to circumvent the requirements of 251/252, (*Id.* at 55) and that "(u)nspecified tariff terms and

conditions deemed by Verizon to be "applicable" should not be incorporated into the interconnection agreement" (Joint Issues Matrix at 29).

Although Intrado recognizes that there may be services that it would purchase that are not covered by Section 252(d)(1), it claims that these services are not within the framework of interconnection arrangements for competitive 9-1-1 services (Initial Br. at 55). Intrado further states that without pricing or specific tariff references explicitly stated in the interconnection agreement, Intrado cannot effectively compete with Verizon because it will not know its operating costs (Intrado Ex. 1, at 27).

Verizon notes that the attachments to the agreement (e.g., the Collocation Attachment, Verizon proposed 9-1-1 Attachment, and Verizon proposed Pricing Attachment) set out the charges that Verizon will bill for the services that it will provide under the agreement. Verizon observes that, while Intrado does not dispute the rates that Verizon proposes in Appendix A of the Pricing Attachment, it has inappropriately proposed to delete much of Verizon's rate-related language in the 9-1-1 Attachment (Joint Issues Matrix at 25). Verizon notes that Intrado specifically objects to tariff references proposed by the ILEC (Verizon Initial Br. at 40).

Verizon notes that Intrado objects to the proposed tariff language for two reasons. First, Intrado submits that the tariff rates may not have been developed pursuant to total element long-run incremental cost (TELRIC) pricing. Second, Intrado argues that without established pricing for every element that Intrado may purchase from Verizon, Intrado cannot effectively compete. As to the first argument, Verizon points out that TELRIC pricing is only required for a specific list of network elements identified by the FCC. As to the second argument, Verizon points to the fact that its wholesale services are still under Commission review and approval (*Id.* at 40, 41).

Verizon points out that the Pricing Attachment provides, *inter alia*, that Verizon's services shall be provisioned as set forth in its tariffs or, in the absence of a tariff rate, as set out in Appendix A to the Pricing Attachment. Verizon describes the rates set forth in Appendix A as being its standard rates offered to other CLECs (*Id.*). Verizon states that, as public utilities normally do, it files tariffs for the services it provides. Verizon maintains that applying tariffed rates for the services that it provides to Intrado is appropriate because these rates are subject to Commission review and approval in accordance with applicable legal standards. Verizon also points out that tariff references are a standard part of its interconnection agreements. Moreover, Verizon states that it has a duty of nondiscrimination under the 1996 Act with regard to the pricing of its services. The company explains that its use of tariffed rates helps ensure that Intrado receives the same, nondiscriminatory prices as other CLECs (Joint Issues Matrix at 29).

Verizon states that Intrado's proposal to limit the applicable tariffs to just those specifically cited in the interconnection agreement or in Appendix A of the Pricing

Attachment is unreasonable inasmuch as neither Verizon nor Intrado can identify, in advance, each of the tariffs and corresponding rates and sections that apply to a particular services that Intrado might possibly purchase at some point in the future, but for which prices are not stated in the agreement (Verizon Initial Br. at 40).

Verizon also asserts that, as noted with respect to Issue 10, Intrado is incorrect in its position that any charges Verizon may assess on Intrado must be developed in accordance with Section 252 (i.e., must be TELRIC-based). In support of its position, Verizon notes that the fact that Intrado identifies a service or feature as an interconnection element does not make it subject to TELRIC pricing (Joint Issues Matrix at 30). Finally, Verizon notes that it has proposed language in Pricing Attach. §1.5 that addresses the question of how "TBD" (to be determined) rates will be replaced with actual rates (*Id.* at 30, 31).

ISSUE 11 ARBITRATION AWARD

While under the filed rate doctrine, it could be argued that tariffed rates could supersede the rates included in an interconnection agreement, this possibility is obviated with respect to unbundled network elements due to the pricing requirements set forth in Section 252. Additionally, in order for a filed rate to "trump" a rate included in the interconnection agreement, there would have to be a tariffed service that precisely matched the description, terms and conditions of a service offered under the interconnection agreement, while having a rate different from that included in the interconnection agreement. There has been no demonstration on the record or on brief in this, or any previous arbitration for which Intrado has petitioned in Ohio, that this situation exists. Indeed, as discussed later, this scenario does not exist. If indeed such an "overlap" were to exist between the tariffed services and the services priced according to Section 252 in the interconnection agreement, the pricing rules of Section 252 would take precedence.

With regard to Intrado's concern that existing tariffs could supersede rates in the interconnection agreement, the Commission notes that Section 1.2 of the interconnection agreement, which is agreed-upon language, indicates that the interconnection agreement (identified as the Principal Document) shall take precedence over filed tariffs in the event of a conflict. This is consistent with Verizon's interpretation of "applicable" tariffs as reflected in their initial brief. As to the rates identified as "TBD," these rates will be determined pursuant to Verizon's proposed language, subject to review by this Commission and/or the FCC or a court of competent jurisdiction.

Verizon's point that it is impossible to determine at this time what services Intrado may at some future time order from Verizon is well taken. There are services that Intrado may well wish to avail itself of under the terms of this agreement, for which rates are not listed in this agreement. A key point in this regard is Verizon's statement that its proposed language "would apply applicable tariffed rates to services that Intrado may

take, but for which prices are not stated in the agreement" (emphasis added) (Verizon Initial Br. at 40). The Commission notes that the incorporation of the reference to tariffs under this scenario will help to ensure that Intrado receives the same nondiscriminatory treatment as any other similarly situated CLEC. In order to avoid further dispute in this regard, this Commission will require that the interconnection agreement itself include that understanding of "applicable tariff." In Section 2 of the Glossary, the parties will be required to define "applicable tariffs" as "those tariffs of either party that identify, define, and set terms, conditions and rates for services, ordered by the other party, that are not subject to the terms, conditions and rates identified in this Agreement, modifications to this Agreement, or successor Agreements." The parties are instructed to use the term consistently throughout the interconnection agreement.

With this addition, the Commission finds that, in the following areas, proposed language should be used in the final agreement as follows:

General Terms and Conditions Section 1.1 - Verizon's proposed language is to be included.

9-1-1 Attach. Sections 1.3.5 and 1.3.6 (as numbered by Intrado) - "...Verizon's [A]pplicable Tariffs and..." is to be included.

9-1-1 Attach. Section 1.4.2 (as set out in Verizon's [A]pplicable Verizon Tariffs and this Agreement)..." is to be included.

9-1-1 Attach. Section 1.7.3 "...Verizon's [A]pplicable Tariffs and..." is to be included.

Pricing Attach. Section 1.3 - Intrado's proposed language is to be excluded.

Pricing Attach. Section 1.5 - Verizon's proposed language is to be included, Intrado's proposed language is to be excluded.

Issue 13 Should the waiver of charges for 9-1-1 call transport, 9-1-1 call transport facilities, ALI Database, and Master Street Address Guide (MSAG), be qualified as proposed by Intrado by other provisions of the Agreement?

Intrado proposes that the following language be incorporated within the interconnection agreement to be approved in this proceeding:

1.7.2 Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment . . .

1.7.3 Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment

Intrado states that each party's ability to bill the other party should be limited to the requirements in the interconnection agreement and the rates contained in the incorporated Pricing Attachment (Initial Br. at 61, Joint Issues Matrix at 31). Intrado notes that the agreed-upon language with respect to this issue specifically identifies reciprocal compensation, intercarrier compensation, exchange access service, the ALI database and the MSAG as items for which the parties are not permitted to impose charges, and states that it is not intending the language at issue here to now create an opportunity to impose charges for these items (Initial Br. at 61, 62).

Verizon proposes that the following language be incorporated within the interconnection agreement to be approved in this proceeding:

1.7.2 Notwithstanding any other provision of this Agreement or Tariff or otherwise

1.7.3 Notwithstanding any other provision of this Agreement or Tariff or otherwise

Verizon maintains that Intrado language creates a loophole that may permit charges for services for which the parties have agreed not to charge (Verizon Initial Br. at 45). Specifically, Verizon submits that Intrado's proposed language contemplates that Intrado might bill Verizon for interconnection or facilities for transport of 9-1-1/E9-1-1 calls to Intrado's network (Verizon Ex. 1, at 80, 81). Verizon opines that this loophole potentially undercuts the parties' agreement that neither will bill the other for transport of 9-1-1/E9-1-1 calls. Verizon avers that Intrado should not be billing Verizon any charges for interconnection or facilities for transport of 9-1-1/E9-1-1 calls (Joint Issues Matrix at 31, 32).

ISSUE 13 ARBITRATION AWARD

As an initial clarification, the issue of whether, and under what conditions, Intrado may be able to charge Verizon for facilities and or interconnection is dealt with in Issue 1, and will not be addressed here.

Each party maintains that it is its intention to not charge for a list of identified services associated with the transport and termination of 9-1-1 calls (Interconnection Agreement §§1.7.2.1 through 1.7.2.4 and §1.7.3). While the parties agree as to the items identified on the list, they disagree regarding the parameters of this commitment. Verizon's language provides that, regardless of any other language in the Agreement, there would be no charge for the identified services. Intrado's language limits what can be

charged for relative to those items explicitly identified in the 9-1-1 Attachment or Appendix A of the Pricing Attachment.

Intrado's proposed language is open-ended and is, therefore, problematic due to the inability to identify every single item that might be ordered or supplied by the parties. In addition, a missed item anywhere else in the agreement has the potential to raise a later issue with regard to these items. Verizon's proposed language has the advantage of not being open-ended and, instead, specifically identifies those services for which there will be no charge. Therefore, the Commission finds that Verizon's proposed language provides a clear and direct method of achieving the desired limitation. Based on this determination, the Commission will incorporate Verizon's proposed language relative to the first sentence of Section 1.7.2 and the first sentence of Section 1.7.3 of the 9-1-1 Attachment.

Issue 14 Should the reservation of rights to bill charges to 9-1-1 controlling authorities and PSAPs be qualified as proposed by Intrado by "to the extent permitted under the parties' tariffs and applicable law"?

Intrado proposes that the following bolded language be incorporated within the interconnection agreement to be approved in this proceeding:

9-1-1 Attach. §2.3 **To the extent permissible under the parties' tariffs and applicable law, [N]othing in this agreement shall be deemed to prevent Verizon from billing to a Controlling 9-1-1 Authority or PSAP rates or charges for:**

9-1-1 Attach. §2.4 **To the extent permissible under the parties' tariffs and applicable law, [N]othing in this agreement shall be deemed to prevent Intrado Comm from billing to a Controlling 9-1-1 Authority or PSAP rates or charges for:**

Intrado submits that the Commission-approved tariffs and state and federal statutes, laws, and other regulations should govern whether either party may impose charges on 9-1-1 Controlling Authorities and PSAPs. Further, Intrado posits that the interconnection agreement should not be permitted to usurp existing tariffs and applicable laws. Specifically, Intrado contends that, absent its proposed language, either party could have the ability to bill Ohio PSAPs for a range of services even if the party no longer provides those services (Initial Br. at 63 citing Tr. 16). Specifically, Intrado expresses the concern of whether Verizon will actually be providing services to a PSAP when Intrado is the designated 9-1-1/E9-1-1 service provider for that PSAP. In support of its position, Intrado references the fact that Verizon's witness could not identify what other services, other than call delivery, Verizon would provide to a PSAP once Intrado is the designated 9-1-1/E9-1-1 provider (*Id.* at 64 citing Tr. 168). In particular, Intrado notes that, once Intrado is designated as the 9-1-1/E9-1-1 service provider, Verizon will no longer provide selective

routing services, ALI database services, or database management services to a PSAP (*Id.* citing Intrado Ex. 1, at 13). Finally, Intrado asserts that the only entity that may control the parties' pricing actions is the Commission, through the enforcement of the applicable law, rules, and tariffs (*Id.* at 64).

Verizon considers Intrado's proposed language to be nothing more than an unwarranted attempt to restrict Verizon's ability to charge a PSAP for service that it continues to provide even when Intrado provides 9-1-1 services to that same PSAP. Verizon acknowledges that it does not have the ability to bill an entity for services that it does not provide. Further, it submits that nothing in the undisputed portions of Sections 2.3 and 2.4 would allow it to do otherwise. Verizon emphasizes that the agreed-upon language in Sections 2.3 and 2.4 pertains to the reservation of rights between Verizon and Intrado and does not impact any rights with respect to third parties. Verizon opines that any billing disputes between a PSAP and Verizon are not appropriate to be addressed in the context of the interconnection agreement between Intrado and Verizon (Initial Br. at 47 citing Verizon Ex. 1, at 83).

ISSUE 14 ARBITRATION AWARD

To the extent that the specific PSAP objects to the transporting of traffic by a particular 9-1-1/E9-1-1 emergency service provider, the Commission determines that the resulting dispute is limited to the PSAP and the 9-1-1/E9-1-1 service provider. It does not logically follow that the interconnection agreement that is the subject of this proceeding is the appropriate venue to address the aforementioned concern. Any issues with respect to the billing of services between a 9-1-1/E9-1-1 emergency service provider and a PSAP extend beyond the scope of this interconnection agreement and pertain to future disputes for which the potential PSAP complainant is not even a party to this proceeding. The rights of such PSAPs should be addressed within the specific agreements entered into between the PSAPs and the applicable 9-1-1/E9-1-1 provider.

Notwithstanding this determination, the Commission recognizes that the parties have agreed to language reflecting that nothing in this agreement shall be deemed to prevent Verizon or Intrado from billing rates or charges to a controlling 9-1-1 authority or PSAP under specified conditions. The only issue in dispute pertains to the following prefacing language: "To the extent permissible under the parties' tariffs. . ."

In considering the disputed language, this Commission points out that, regardless of the stated positions, the parties' ability to charge entities that are not parties to this agreement is controlled by the existing law and applicable tariffs for the company providing such services. To make it clear, neither party should expect to be able to bill any party in a manner contrary to either law or its approved tariffs. While the language proposed by Intrado attempts to express this principle, it does so imprecisely. Specifically, the Commission recognizes that one carrier's tariffs are not binding on another carrier.

Inasmuch as Intrado's proposed language could be construed to indicate otherwise, the Commission will amend Intrado's proposed language in Sections 2.3 and 2.4 of the 9-1-1 Attachment as follows: In Section 2.3, "the Parties' Tariffs" should be replaced by "Verizon's Tariffs" and in Section 2.4, "the Parties' Tariffs" should be replaced with "Intrado's Tariffs."

Issue 15 Should Intrado have the right to have the agreement amended to incorporate provisions permitting it to exchange traffic other than 9-1-1/E9-1-1 calls?

Intrado seeks to include the following language as part of the already agreed-upon language in §1.5 of the General Terms and Conditions:

Notwithstanding the foregoing, the parties agree that: (a) Intrado may seek to offer telecommunications and local exchange services other than 9-1-1/E9-1-1 calls in the future; and (b) upon Intrado's request, the parties may amend this agreement as necessary to provide for the interconnection of the parties' networks pursuant to 47 U.S.C. §251(c)(2) for the exchange of traffic other than 9-1-1/E9-1-1 calls.

Intrado submits that its proposed language is necessary in the event that it obtains the necessary certification and decides to offer additional telephone exchange services (Initial Br. at 65 citing Intrado Ex. 1, at 36). In support of its position, Intrado explains that the negotiation and arbitration of interconnection agreements involves a significant amount of time and resources. Intrado posits that there is no reason for the parties to restart the arbitration process relative to provisions that have already been resolved by the parties or by the Commission (*Id.* citing Tr. 33). Intrado submits that its position is consistent with the FCC's determination that "any carrier attempting to arbitrate issues that have previously been resolved in an arbitration solely to increase another party's costs would be in violation of the duty to negotiate in good faith and could be subject to enforcement (*Id.* citing *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd. 13494, ¶28 [2004]).

As further support for its position, Intrado represents that, consistent with the agreed-upon terms of the proposed interconnection agreement, any amendment to be made to the agreement will be subject to negotiations between the parties, dispute resolution before the Commission, and possibly arbitration before the Commission (*Id.* at 66, citing General Terms and Conditions §4.6). Finally, Intrado asserts that an order by the Commission modifying Intrado's status in Ohio would be considered a change in law affecting provisions of the agreement. Specifically, Intrado notes that the proposed interconnection agreement (General Terms and Conditions §4.6) considers the occurrence of a change in law as follows:

If any legislative, regulatory, judicial, or other governmental decision, order, determination, or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a party hereunder, or the ability of a party to perform any material provision of this Agreement, the parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to confirm the Agreement to Applicable Law.

(*Id.* at 67).

Verizon considers Intrado's proposed language with respect to this issue to provide Intrado with the unilateral right to an amendment outside of the interconnection agreement's change of law provisions. Verizon opines that Intrado's position is incorrect inasmuch as the parties agreed to negotiate and arbitrate this interconnection agreement based largely on the fact that Intrado is seeking to provide only 9-1-1 related services to PSAPs. Therefore, Verizon submits that, absent a change in law affecting provisions of the interconnection agreement which would allow a party to request an amendment to the agreement, Intrado should not have a unilateral right to seek an amendment to the agreement. Based on the arguments raised by Intrado with respect to this issue, Verizon submits that if indeed a change in certification constitutes a change of law, there would be no need for Intrado's proposed language in §1.5 of the General Terms and Conditions.

To the extent that Intrado seeks to greatly expand the scope of the agreement, Verizon believes that Intrado should negotiate an entirely new agreement in which all of the provisions of the agreement will be at issue and the parties will be able to engage in fair and balanced negotiations of the interconnection agreement, trading off one provision against the other (Initial Br. at 48, 49 citing Verizon Ex. 1, at 83-85). In support of its position, Verizon highlights 47 CFR §51.809, which prohibits CLECs from being able to "pick and choose" favorable contract terms and conditions (*Id.* at 47).

ISSUE 15 ARBITRATION AWARD

Based on a review of the parties' stated positions, the Commission finds that Intrado's proposed language should be rejected. In reaching this determination, the Commission rejects Intrado's contention that an expansion of the company's certification constitutes a change in law subject to General Terms and Conditions §4.6. Specifically, the Commission highlights the fact that General Terms and Conditions §4.6 provides, in part, that:

If any legislative, regulatory, judicial, or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the

Parties shall promptly renegotiate in good faith in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law . . .

Certainly, the expansion of Intrado's certification to now include competitive local exchange company authority in no way affects any material provision of this agreement, the rights or obligation of a party under the agreement, or the ability of a party to perform any material provision of this agreement. The expanded certification simply signifies new, additional services to be offered by Intrado. To the extent that Intrado seeks interconnection with respect to these new services, the Commission finds that Intrado must seek to renegotiate the interconnection in its entirety and not limit the negotiations/dispute resolution to just the single issue of the inclusion of the additional services. To do otherwise, the Commission would be allowing Intrado to unfairly benefit by not allowing for the parties' or the Commission's consideration of the all of the terms and conditions of the interconnection agreement in their entirety.

Consistent with this determination, the Commission notes that Rule 4901:1-7-07(B), O.A.C., provides that parties to an existing interconnection agreement may entertain bona fide requests for an interconnection arrangement, service, or unbundled network element that is subsequent to, unique, or in addition to an existing interconnection agreement and is to be added as an amendment to the underlying interconnection agreement to the extent that the parties can negotiate such an amendment. In the event that the parties cannot negotiate such an agreement, pursuant to Rule 4901:1-7-07(C)(2), a party may seek arbitration of a subsequent interconnection agreement. As such, all terms and conditions could be subject to arbitration.

Issue 16 Should the Verizon proposed term "a caller" be used to identify what entity is dialing 9-1-1, or should this term be deleted as proposed by Intrado?

Verizon proposes the following highlighted language be included as part of 9-1-1 Attach. §1.1.1:

9-1-1/E9-1-1 arrangements provide a caller access to the appropriate PSAP by dialing a 3-digit universal telephone number, "9-1-1".

Verizon contends that its inclusion of "a caller" in 9-1-1 Attach. §1.1.1 is necessary in order in order to provide clarity regarding the fact that a Verizon customer, as the "caller," can reach PSAPs served by Intrado by dialing 9-1-1. In support of its position, Verizon states that its proposed language accurately describes the function of 9-1-1/E9-1-1 arrangements; specifically, the access that 9-1-1/E9-1-1 arrangements provide to a caller (Verizon Initial Br. at 49, 50 citing Verizon Ex. 1, at 85).

Intrado submits that there is no reason for the inclusion of a general description of which entity is dialing 9-1-1 (Intrado Initial Br. at 67 citing Intrado Ex. 2, at 61). Specifically, Intrado finds that the inclusion of "a caller" is too restrictive inasmuch as it would limit the 9-1-1 arrangement to fixed line subscriber dial tone and would not include the ability for 9-1-1 calls from wireless devices or interconnected VoIP providers to be able to be completed to Intrado PSAP customers (*Id.* citing Tr. 83, 169, 170).

ISSUE 16 ARBITRATION AWARD

Based on the record in this proceeding, the Commission determines that Verizon's proposed language should be deleted from the proposed agreement inasmuch as, rather than clarity, its inclusion will result in additional disputes. In reaching this determination, the Commission notes that the agreement itself fails to define the proposed term. Additionally, as reflected by the record in this case, any potential definition of this term could be quite broad in scope (*Id.*). Therefore, in order to avoid the creation of further disputed issues, the proposed language should be deleted. As a result, 9-1-1 Attach. §1.1.1 will read as follows:

9-1-1/E9-1-1 arrangements provide access to the appropriate PSAP by dialing a 3-digit universal telephone number, "9-1-1".

The deletion of "a caller" will have no adverse effect regarding the intent of this interconnection agreement to apply to the scenario in which Verizon customers terminate 9-1-1 calls to PSAPs served by Intrado. Instead, it would appear that the deletion of "a caller" will actually assist in reducing the potential for dispute between the parties inasmuch as it is an undefined term.

It is, therefore,

ORDERED, That Intrado and Verizon incorporate the directives set forth in this Arbitration Award within their final interconnection agreement. It is, further,

ORDERED, That, within thirty days of this Arbitration Award, Intrado and Verizon shall docket their entire interconnection agreement for review by the Commission, in accordance with the Rule 4901:1-7-09, O.A.C. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each party shall file, for the Commission to review, its version of the language that should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That, within ten days of the filing of the interconnection agreement, any party or other interested persons may file written comments supporting or opposing the proposed interconnection agreement language and that any party or other interested persons may file responses to comments within five days thereafter. It is, further,

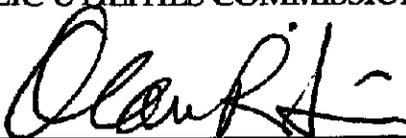
ORDERED, That nothing in this Arbitration Award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this Arbitration Award does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate any party to a contract from the provisions of any state or federal law that prohibits restraint of trade. It is, further,

ORDERED, That this docket shall remain open until further order of the Commission. It is, further,

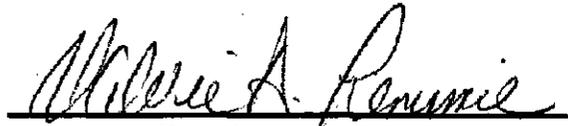
ORDERED, That a copy of this Arbitration Award be served upon Intrado, Verizon, their respective counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

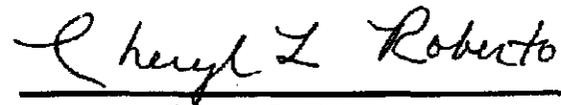
Paul A. Centolella



Valerie A. Lemmie



Ronda Hartman Fergus

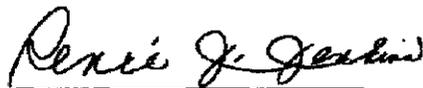


Cheryl L. Roberto

JSA:geb

Entered in the Journal

JUN 24 2009



Renee J. Jenkins
Secretary

Attachment 2

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Intrado)
Communications, Inc. for Arbitration of)
Interconnection, Rates, Terms, and)
Conditions and Related Arrangements with) Case No. 08-198-TP-ARB
Verizon North Inc. Pursuant to Section)
252(b) of the Telecommunications Act of)
1996.)

ENTRY ON REHEARING

The Commission finds:

- (1) On March 5, 2008, Intrado Communications, Inc. (Intrado) filed a petition for arbitration of numerous issues to establish an interconnection agreement with Verizon North Inc. (Verizon North). Intrado filed the petition pursuant to Section 252(b) of the Telecommunications Act of 1996 (1996 Act).
- (2) On June 24, 2009, the Commission issued its arbitration award in this proceeding.
- (3) On July 24, 2009, Verizon North filed an application for rehearing of the Commission's arbitration award asserting that the Commission incorrectly decided the following arbitrated issues:
 - (a) Issue 1 - Where should the points of interconnection (POIs) be located and what terms and conditions should apply with regard to interconnection and transport of traffic?
 - (b) Issue 10 - What should Verizon North charge Intrado for 9-1-1/E9-1-1 related services and what should Intrado charge Verizon North for 9-1-1/E9-1-1 related services?
- (4) On August 3, 2009, Intrado filed its memorandum contra Verizon's application for rehearing.
- (5) On August 19, 2009, the Commission issued an entry on rehearing granting Verizon North's application for rehearing. Specifically,

the Commission determined that “. . . sufficient reasons have been set forth by Verizon to warrant further consideration of the matters specified in the application for rehearing” (Entry on Rehearing at 1).

- (6) In its assignment of error pertaining to Issue 1, Verizon North submits that the Commission’s determination that the company interconnect with Intrado at a point within Intrado’s network is based on a misguided interpretation of an Federal Communications Commission (FCC) decision, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Calling Systems, Request of King County*, Order on Reconsideration, 17 FCC Rcd 14789, WT Docket No. 94-102 (May 7, 2001). Specifically, Verizon North asserts that this decision is unrelated to the issue of points of interconnection pursuant to Section 251(c) of the 1996 Act but, instead, addresses the allocation of costs related to the implementation of E9-1-1 services for wireless carriers when the wireless carriers interconnect with a 9-1-1 selective router maintained by the incumbent local exchange company (ILEC). Verizon North argues that no FCC precedent authorizes the Commission to ignore the 1996 Act and the FCC’s rule requiring the point of interconnection to be within the ILEC’s network (Application for Rehearing at 7-9).

Additionally, Verizon North avers that, despite the fact that neither party requested Section 251(a) interconnection, the Commission mistakenly relied on this statutory section in requiring Verizon North to interconnect with Intrado’s network. Specifically, Verizon North argues that, since Intrado requested interconnection solely pursuant to Section 251(c), the Commission is required to analyze Intrado’s proposals under that section of the 1996 Act. Therefore, Verizon North considers the Commission’s ruling to be unlawful and believes that it should be reversed. In support of its position, Verizon North states that Intrado sought interconnection pursuant to Section 251(c), and did not seek to negotiate Section 251(a) terms with the ILEC. Additionally, Verizon North represents that it has not agreed to interconnect with Intrado on Intrado’s network pursuant to Section 251(a). Verizon North cites *Sprint v. Pub. Util. Comm’n of Texas, Order and Brazos Tel. Coop., Inc.*, Case No. A-06-CA-0650-SS, 2006 U.S. Dist. LEXIS 96569 (Aug. 14, 2006), at 16, in support of its position that Section 251(a) is unrelated to the requirement of an ILEC to negotiate and arbitrate interconnection pursuant to Sections 251(c) and 252 (*Id.* at 10).

Finally, Verizon North avers that, while the Commission acknowledges that it cannot require the ILEC to interconnect on Intrado's network pursuant to Section 251(c), the arbitration award would require it to undertake this obligation pursuant to Section 251(a), despite the fact that Section 251(a) does not require direct interconnection. Therefore, Verizon North submits that, inasmuch as it is not obligated to interconnect with Intrado's network pursuant to Section 251(c), it should certainly not be subject to greater obligations pursuant to Section 251(a).

- (7) Intrado asserts that, in finding that the point of interconnection should be located on Intrado's network, the Commission properly exercised its broad authority over the deployment of competition and 9-1-1 services in general, as well as its jurisdiction pursuant to Sections 251(a) and 251(c). In doing so, Intrado believes that the Commission properly applied the applicable law to its decision (Memorandum Contra at 8, 9). In response to Verizon North's contention that the Commission should not have relied upon Section 251(a) in the context of this arbitration, Intrado states that the Commission has properly found on four prior occasions that it has the authority to arbitrate and oversee all Section 251 interconnection agreements, and not just those pertaining to Section 251(c) (*Id.* at 8, 9 citing Case No. 07-1216-TP-ARB, Arbitration Award at 15; Case No. 08-537-TP-ARB, Entry on Rehearing at 11, 12; Case No. 07-1280-TP-ARB, Arbitration Award at 16, Entry on Rehearing at 19).

Additionally, Intrado responds that the *Kings County* Order is applicable to this proceeding. Specifically, Intrado notes that in that decision, the FCC determined that, when a 9-1-1 call is made, the carrier must bring the 9-1-1 call and the associated call information to the 9-1-1 selective router serving the public safety answering point (PSAP). In support of its position, Intrado points out that the location of the point of interconnection affects each party's costs and establishes the cost-allocation point in the network. Additionally, Intrado believes that the arbitration award in this case is consistent with the *Kings County* Order in that the decision stands for the principle that interconnection should occur at the applicable selective router. Therefore, Intrado believes that, in this case, it is appropriate to conclude that Intrado should be required to deliver 9-1-1/E9-1-1 calls destined for PSAP customers of Verizon North to Verizon North's selective router and, similarly, Verizon North should be required to deliver 9-1-1/E9-1-1 calls

destined for PSAP customers of Intrado to Intrado's selective router (*Id.* at 7).

- (8) The Commission determines that Verizon North has failed to raise any new arguments for the Commission's consideration. Therefore, the application for rehearing with respect to this assignment of error is denied.

In both the arbitration award in this proceeding, as well as the prior arbitration awards involving Intrado and other ILECs, the Commission fully analyzed the issue of the appropriate point of interconnection under the scenario in which the ILEC requires interconnection for the purpose of completing its end users' emergency calls to the PSAP served by Intrado. Pursuant to its analysis, the Commission found Section 251(a) to be the controlling jurisdictional statute and determined that the applicable point of interconnection should be at Intrado's selective router.

Additionally, notwithstanding the arguments raised by Verizon North, the Commission finds that the arbitration award for Issue 1 is consistent with the FCC's *King County* Order. While the FCC in the *King County* Order determined that the cost allocation point for 9-1-1 traffic should be at the ILEC's selective router, that determination was based on the scenario in which the ILEC was the 9-1-1 service provider to the PSAP. Our decision in this proceeding is consistent with the *King County* Order in that it establishes a cost allocation point at the selective router of the 9-1-1 service provider to a PSAP. It is further consistent with the *King County* Order in that it requires carriers seeking to deliver their end users' 9-1-1 calls to the PSAP to be responsible for the cost of delivering those calls to the selective router serving the PSAP, which can be achieved through either direct or indirect interconnection.

- (9) In its assignment of error pertaining to Issue 10, Verizon North states that the Commission's "adoption of Intrado's arbitrary interconnection rates has no basis in law or in fact" (Application for Rehearing at 1). Verizon North maintains that the Commission incorrectly concluded that Intrado should be allowed to charge Verizon North for the same facilities that Verizon North charges other carriers when interconnecting for 9-1-1 purposes (*Id.* at 2). Verizon North argues that, despite the fact that Intrado never established that the ILEC actually assessed such charges, the Commission inappropriately accepted Intrado's argument that it

should have reciprocal rights to charge port or termination charges when Verizon North interconnects with Intrado's network (*Id.*). Verizon North asserts that there is no demonstration that it will charge Intrado (or any carrier) a port charge to interconnect with its selective routers (*Id.* at 2-4 citing Tr. 133-136).

Additionally, Verizon North argues that there is no demonstration in the record supporting the reasonableness of the rates proposed by Intrado (*Id.* at 4). Verizon North notes that the Commission rejected Intrado's argument that the Commission had no authority to determine a competitor's rates (*Id.* at 5).

- (10) Intrado asserts that Verizon North's application for rehearing with respect to this assignment of error should be denied inasmuch as Verizon North's arguments are essentially identical to those already raised in the testimony and briefs in this proceeding. With respect to the contention that Intrado should not be permitted to impose trunk port charges since Verizon North does not impose such charges, Intrado submits that this argument is misplaced inasmuch as the Commission has repeatedly determined that there is "no requirement for reciprocity in interconnection rates" (Intrado Memorandum Contra at 3 citing Arbitration Award at 31; Case No. 08-537-TP-ARB, Arbitration Award at 21; Case No. 07-1280-TP-ARB, Arbitration Award at 21). Intrado points to the interconnection language, and states that such language recognizes that "Verizon may impose charges on Intrado for connection to the point of interconnection" (Intrado Memorandum Contra at 4). Intrado also argues that the Commission did undertake an inquiry about the reasonableness of the company's proposed interconnection rates and specifically stated that it is exercising its authority under Section 252(b)(1) and 252(b)(4) (Intrado Memorandum Contra at 4). Intrado also opines that it supported its rates in pre-filed testimony and that, while Verizon North had an opportunity to cross-examine Intrado's witness on this subject, it failed to do so (Intrado Memorandum Contra at 5).
- (11) The Commission determines that Verizon North has failed to raise any new arguments for the Commission's consideration. Therefore, the application for rehearing with respect to this assignment of error is denied.

While Verizon North asserts that the Commission's decision to allow Intrado to charge port charges is based on the erroneous assumption that Verizon North assesses analogous charges when

carriers interconnect at Verizon North's selective routers, the Commission notes that, unlike the issue of reciprocity and the ability to charge for the transport and termination of 9-1-1 traffic, the question of whether either party may charge for facilities, such as ports, should be analyzed on an individual company basis. Nothing in the 1996 Act requires reciprocity with respect to interconnection facilities charges, whether in terms of the facilities for which charges may be assessed, the rates themselves, or the manner in which those facilities are combined for the purposes of assessing charges.

Additionally, with respect to Verizon North's argument that Intrado's rates and this Commission's approval of such rates are inappropriate inasmuch as there has been no explicit determination that the rates are reasonable, the Commission notes that there is no state or federal requirement for the development of cost-based interconnection port rates by a competitive carrier such as Intrado. Additionally, the Commission notes that the rates proposed by Intrado in this proceeding are identical to the Intrado rates approved by the Commission in Case Nos. 07-1216, 07-1280, and 08-537.

It is, therefore,

ORDERED, That Verizon North's application for rehearing is denied in accordance with the findings above. It is, further,

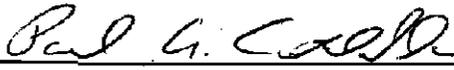
ORDERED, That within 14 days of this Entry on Rehearing, the parties file an executed interconnection agreement consistent with arbitration award issued in this proceeding. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties and interested persons of record.

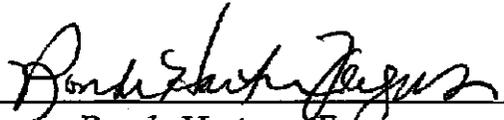
THE PUBLIC UTILITIES COMMISSION OF OHIO



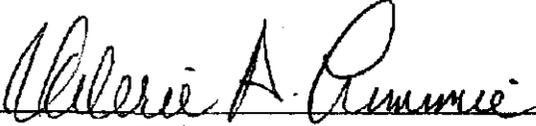
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



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