

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, F.S.

DOCKET NO. 070699-TP
ORDER NO. PSC-08-0401-PHO-TP
ISSUED: June 17, 2008

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on June 16, 2008, in Tallahassee, Florida, before Commissioner Lisa Polak Edgar, as Prehearing Officer.

APPEARANCES:

FLOYD SELF, ESQUIRE, Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, Florida 32308, CHÉRIE R. KISER and ANGELA F. COLLINS, ESQUIRES, Cahill Law Firm, 1990 K Street N.W., Suite 950, Washington, D.C. 20006, and REBECCA BALLESTEROS, ESQUIRE, Associate Counsel, Intrado Communications, Inc., 1601 Dry Creek Drive, Longmont, Colorado 80503

On behalf of Intrado Communications, Inc. (INTRADO COMM).

SUSAN S. MASTERTON, ESQUIRE, Embarq Florida, Inc., 1313 Blair Stone Road, Tallahassee, Florida 32301

On behalf of Embarq Florida, Inc. (EMBARQ).

T. LEE ENG TAN, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CASE BACKGROUND

On November 27, 2007, Intrado Communications, Inc. (Intrado Comm) filed a Petition for Arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., (Embarq) pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, Florida Statutes.

On December 17, 2007, Embarq filed a Motion to Dismiss Intrado Comm's Petition for Arbitration. Embarq Florida, Inc. filed its Response to Intrado Comm's Petition for Arbitration on December 21, 2007. Intrado Comm filed a Response in Opposition on December 24, 2007.

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An issue identification was held on March 10, 2008. Pursuant to Intrado Comm's request, an administrative hearing has been set for July 9, 2008.

The parties have resolved the following issues: 3E, 6A, 8, 9, 10, and 12.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 364, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-22, and 28-106, Florida Administrative Code, as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 119.07(1), F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made *and the information has not been made a part of the evidentiary record in this proceeding*, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, F.S.. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential

information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u> |
|----------------------------|---------------------|--|
| <u>Direct and Rebuttal</u> | | |
| Carey Spence-Lenss* | INTRADO COMM | 1(a), 1(b), 1(c), and 1(d) |
| Cynthia Clugy* | INTRADO COMM | 11 and 14 |
| Thomas Hicks* | INTRADO COMM | 1(a), 1(b), 1(d), 2(a), 2(b), 3(a), 3(b), 3(c), 4(a), 4(b), 5, 6(b), 7, and 13 |
| John Melcher** | INTRADO COMM | 2(a) and 2(b) |
| Edward C. (“Ted”) Hart* | EMBARQ | 14 |
| James M. (“Mike”) Maples* | EMBARQ | 1, 2, 3, 4, 5, 6(b), 7, 11 and 13 |

* Direct and Rebuttal

** Rebuttal Only

VII. BASIC POSITIONS

INTRADO COMM:

Intrado Comm is authorized as a competitive local exchange carrier (“CLEC”) by this Commission to provide regulated telecommunications services (*i.e.*, 911 selective routing, switching, aggregation, and transport). Intrado Comm’s Intelligent Emergency Network® enables the public safety community to transcend the existing limitations of the nation’s legacy 911 infrastructure. The Intrado Comm 911/E911 service offering will make new applications and services available to public safety answering points (“PSAPs”) and other public safety entities, which will increase their efficiency and effectiveness in responding to emergency calls.

The demand for competitive E911 services is growing. Despite the significant number of competitive providers in the local exchange market, competitive choices for the public safety community do not exist today. Intrado Comm seeks to change that. Relying on the innovative Intelligent Emergency Network®, Intrado Comm will provide 911 services to Florida PSAPs, which will enable voice, data, streaming media capabilities, and many other new and innovative services and features. The Intelligent Emergency Network® will extend the usefulness of the existing 911 infrastructure to handle numerous 911 call types regardless of technology – wireline, wireless, Internet telephony, and other

technologies in use today. It is designed to be dynamic and recognizes that all 911 calls are not and will not be relayed by the caller in the same way in light of existing and future technologies.

As a competitive provider of telecommunications services, Intrado Comm is entitled to interconnect its network with the networks of incumbent local exchange carriers ("ILECs") currently offering 911 services pursuant to the framework established by Sections 251 and 252 of the Communications Act of 1934, as amended ("Act"), and the applicable provisions of Florida law. These sections of the Act were designed specifically to promote the type of interconnection Intrado Comm seeks – to facilitate the interconnection and interoperability of competing local networks. In order to provide its competitive 911/E911 services in Florida, Intrado Comm must interconnect its network with the incumbent providers that have connections with and provide services to PSAPs and other end users. Interconnection, at a minimum, will allow Embarq's end users to reach Intrado Comm's end users and vice versa. In the emergency services context, interconnection will permit the 911 caller, including the caller's information, to reach the appropriate PSAP. Interconnection pursuant to Section 251(c) of the Act is the only way to address the uneven bargaining power that exists between competitors and monopoly incumbents.

EMBARQ: The primary area of disagreement between Embarq and Intrado Comm is whether and how §251(c) of the federal Telecommunications Act governs the terms and conditions for interconnection when Intrado Comm is the 911 service provider to a Public Safety Answering Point (PSAP) and Embarq must interconnect with Intrado Comm to terminate 911 calls originated by Embarq's end users. It is Embarq's position that §251(c) does not, and was never intended to, apply to these arrangements, but that these arrangements are governed by §251(a) of the Act and should be included in a separate commercial agreement negotiated by parties. Contrary to Intrado Comm's assertions, Embarq does not oppose Intrado Comm's entry into the 9-1-1 services market here in Florida or anywhere else. Embarq has offered to do business with Intrado Comm just like it does with any other CLEC or 9-1-1 service provider. Unfortunately, Intrado Comm is seeking preferential treatment rather than the parity it professes to seek.

Embarq's positions on the issues are fair, reasonable and consistent with the Act and with Commission and FCC precedent. For those terms and conditions governed by §251(c) the Commission should approve Embarq's proposed language which reflects the standard terms and conditions for §251(c) interconnection included in the numerous interconnection agreements Embarq has entered into with competitive carriers in Florida. For those terms and conditions not governed by §251(c), the Commission should order the parties to negotiate those terms and conditions and include them in a separate commercial agreement.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

ISSUE 1(a): **WHAT SERVICE(S) DOES INTRADO CURRENTLY PROVIDE OR INTEND TO PROVIDE IN FLORIDA?**

POSITIONS

INTRADO

COMM: At this time, Intrado Comm intends to provide a telephone exchange service to PSAPs and other public safety agencies in Florida. This competitive 911 service offering is similar to the telephone exchange communication service currently offered by Embarq to PSAPs in Florida via Embarq's retail tariff. The Intrado Comm Intelligent Emergency Network[®] will enable Intrado Comm to provide a competitive local exchange service that is purchased by PSAPs so they can receive, process, and respond to calls to 911 placed by consumers of wireline, wireless, and IP-based communication services. In the future, Intrado Comm will likely provide other types of local exchange services in Florida.

EMBARQ: As listed on its Florida Price List on file with the Commission, Intrado Comm offers: 9-1-1 Routing Service; ALI Management Services; 9-1-1 Exchange Access Trunks; ALI Data Access Connections; and Diverse Facility Routing. These products are sold to local government or other public safety organizations for the provision of Emergency Services to end users. Some of the products are also sold to Local Exchange Carriers, Commercial Mobile Radio Service providers and interconnected Voice over Internet Protocol companies for providing access the Wireline E911 Network.

STAFF: Staff has no position at this time.

ISSUE 1(b): **OF THE SERVICES IDENTIFIED IN (A), FOR WHICH, IF ANY, IS EMBARQ REQUIRED TO OFFER INTERCONNECTION UNDER SECTION 251(C) OF THE TELECOMMUNICATIONS ACT OF 1996?**

POSITIONS

INTRADO

COMM: To provide its 911 service offering to PSAPs, Intrado Comm must interconnect with the public switched telephone network so that Embarq's end users can reach Intrado Comm's end users and vice versa. Similar to the way in which Embarq

classifies its service, the service Intrado Comm intends to provide to PSAPs is a telephone exchange service, and Intrado Comm is entitled to interconnection under Section 251(c) of the Act to provide its service. The Federal Communications Commission (“FCC”) has defined “interconnection” as the linking of two networks for the mutual exchange of traffic. Intrado Comm seeks to link its network with Embarq’s network for the mutual exchange of traffic between the Parties’ end users. Intrado Comm is entitled to all interconnection arrangements available under Section 251(c), the FCC’s rules, and related law. 911/E911 services cannot be provided without interconnection to the public switched telephone network (“PSTN”). And while E911 services may contain an information service component (such as the Automatic Location Information (“ALI”) function), the comprehensive 911 service offered to PSAPs by incumbents today, and the Intrado Comm 911 service soon to be provided, are telecommunications services and treated as telephone exchange services under the law and as evidenced by incumbent local exchange carrier tariffs approved by this Commission. The interoperability of competing local exchange networks in the manner proposed by Intrado Comm in this proceeding is a keystone of the local competition provisions that Sections 251 and 252 of the Act were designed to facilitate.

EMBARQ: Embarq is required to offer interconnection under §251(c) when Embarq is the 911 provider to a Public Safety Answering Point (PSAP) and Intrado seeks interconnection for the purposes of terminating end user 911 calls. Embarq’s interconnection with Intrado when Intrado is the 911 provider to a PSAP is governed by §251(a) and should be included in a commercial agreement, not a §251(c) interconnection agreement

STAFF: Staff has no position at this time.

ISSUE 1(c): **OF THE SERVICES IDENTIFIED IN (A), FOR WHICH, IF ANY, IS EMBARQ REQUIRED TO OFFER INTERCONNECTION UNDER SECTION 251(C) OF THE TELECOMMUNICATIONS ACT OF 1996?**

POSITIONS

**INTRADO
COMM:**

As a telecommunications carrier offering telephone exchange services, Intrado Comm is entitled to interconnection facilities and unbundled network elements (“UNEs”) at cost-based rates established pursuant to the process set forth in Sections 251 and 252 of the Act. Intrado Comm’s interconnection agreement with Embarq should include a pricing appendix that sets forth the prices to be charged by Embarq for services, functions, and facilities to be purchased in connection with the Parties’ interconnection arrangements in Florida. Intrado Comm has proposed similar rates to govern Embarq’s interconnection to Intrado

Comm's Intelligent Emergency Network[®], such as port termination charges. The charges proposed by Intrado Comm are similar to the entrance facility and port charges imposed by Embarq on competitors for interconnection to Embarq's network.

EMBARQ: Rates should appear in the interconnection agreement only for those services provided by Embarq in accordance with §251(c).

STAFF: Staff has no position at this time.

ISSUE 1(d): **FOR THOSE SERVICES IDENTIFIED IN 1(C), WHAT ARE THE APPROPRIATE RATES?**

POSITIONS

INTRADO

COMM: As a telecommunications carrier offering telephone exchange services, Intrado Comm is entitled to interconnection facilities and unbundled network elements ("UNEs") at cost-based rates established pursuant to the process set forth in Sections 251 and 252 of the Act. Intrado Comm's interconnection agreement with Embarq should include a pricing appendix that sets forth the prices to be charged by Embarq for services, functions, and facilities to be purchased in connection with the Parties' interconnection arrangements in Florida. Intrado Comm has proposed similar rates to govern Embarq's interconnection to Intrado Comm's Intelligent Emergency Network[®], such as port termination charges. The charges proposed by Intrado Comm are similar to the entrance facility and port charges imposed by Embarq on competitors for interconnection to Embarq's network.

EMBARQ: The appropriate rates are the rates included on Revised Exhibit JMM-12.

STAFF: Staff has no position at this time.

ISSUE 2(a): **WHAT TRUNKING AND TRAFFIC ROUTING ARRANGEMENTS SHOULD BE USED FOR THE EXCHANGE OF TRAFFIC WHEN INTRADO IS THE DESIGNATED 911/E911 SERVICE PROVIDER?**

POSITIONS

INTRADO

COMM: The optimal way for carriers to route their traffic to the appropriate 911 service provider is to establish direct and redundant trunk configurations from originating offices to multiple, diverse 911 network access points. This would require the

carrier to sort its calls at the originating switch, and deliver the calls to the appropriate 911 routing system over diverse and redundant facilities (this technique is known as "Line Attribute Routing"). This trunk and transport configuration minimizes the switching points, which reduces the potential for failure arising from the introduction of additional switching points into the call delivery process. Also, should one path be unable to complete the call, the presence of an alternative diverse facility greatly enhances the ability for the emergency call to be delivered to the PSAP. There is no reason for Embarq to switch a 911 call at its selective router when it is not the 911/E911 service provider for the PSAP. This unnecessary switching introduces another potential point of failure in the 911 call path. Selective routing should only happen at the selective router of the carrier serving the PSAP. There are means for Embarq to sort its 911 calls to ensure the call is directed to the appropriate PSAP served by another E911 service provider; however, its solution to use its 911 selective routing infrastructure to sort the calls and place those calls on a single common trunk group creates numerous parity issues and presents unnecessary additional risk for those Embarq subscribers subject to such inefficient switching.

EMBARQ: First, the terms and conditions governing the parties' trunking and traffic arrangements when Intrado is the designated 911/E911 Service Provider are not governed by §251(c) and should not be included in a §251(c) interconnection agreement. Rather, they should be included in a commercial agreement negotiated between the parties. Second, Embarq should be able to use its selective routers to determine where to direct 911 calls originated by Embarq's end users. The Commission should reject Intrado's unreasonable position that Embarq should be required to implement "class marking" and direct end office trunks to route its end user originated traffic to Intrado. This alternative is not justified either legally or practically and would be extremely burdensome and expensive for Embarq to implement. Finally, the Commission should reject Intrado's proposal to require Embarq to pay for Intrado's handing off of calls to a secondary 911 provider.

STAFF: Staff has no position at this time.

ISSUE 2(b): **WHAT TRUNKING AND TRAFFIC ROUTING ARRANGEMENTS SHOULD BE USED FOR THE EXCHANGE OF TRAFFIC WHEN EMBARQ IS THE DESIGNATED 911/E911 SERVICE PROVIDER?**

POSITIONS

INTRADO
COMM:

The optimal way for carriers to route their traffic to the appropriate 911 service provider is to establish direct and redundant trunk configurations from originating offices to multiple, diverse 911 network access points. This would require the carrier to sort its calls at the originating switch, and deliver the calls to the

appropriate 911 routing system over diverse and redundant facilities (this technique is known as "Line Attribute Routing"). This trunk and transport configuration minimizes the switching points, which reduces the potential for failure arising from the introduction of additional switching points into the call delivery process. Also, should one path be unable to complete the call, the presence of an alternative diverse facility greatly enhances the ability for the emergency call to be delivered to the PSAP. There is no reason for Embarq to switch a 911 call at its selective router when it is not the 911/E911 service provider for the PSAP. This unnecessary switching introduces another potential point of failure in the 911 call path. Selective routing should only happen at the selective router of the carrier serving the PSAP. There are means for Embarq to sort its 911 calls to ensure the call is directed to the appropriate PSAP served by another E911 service provider; however, its solution to use its 911 selective routing infrastructure to sort the calls and place those calls on a single common trunk group creates numerous parity issues and presents unnecessary additional risk for those Embarq subscribers subject to such inefficient switching.

EMBARQ: First, the terms and conditions governing the parties' trunking and traffic arrangements when Intrado is the designated 911/E911 Service Provider are not governed by §251(c) and should not be included in a §251(c) interconnection agreement. Rather, they should be included in a commercial agreement negotiated between the parties. Second, Embarq should be able to use its selective routers to determine where to direct 911 calls originated by Embarq's end users. The Commission should reject Intrado's unreasonable position that Embarq should be required to implement "class marking" and direct end office trunks to route its end user originated traffic to Intrado. This alternative is not justified either legally or practically and would be extremely burdensome and expensive for Embarq to implement. Finally, the Commission should reject Intrado's proposal to require Embarq to pay for Intrado's handing off of calls to a secondary 911 provider.

STAFF: Staff has no position at this time.

ISSUE 3(a): **WHAT TERMS AND CONDITIONS SHOULD GOVERN POINTS OF INTERCONNECTION (POIs) WHEN INTRADO IS THE DESIGNATED 911/E911 SERVICE PROVIDER?**

POSITIONS

INTRADO

COMM: Embarq has indicated that Intrado Comm's proposed language is generally acceptable. The dispute between the Parties is whether the arrangement should be part of a Section 251(c) agreement. Intrado Comm is proposing a physical interconnection arrangement that is similar to that used by ILECs today. Intrado Comm's proposed language would permit Embarq to use any method to transport

its end users' 911 calls to Intrado Comm's network while ensuring that Embarq does not engage in switching the call at a central office other than its originating office prior to delivering its traffic to the equivalent of Intrado Comm's selective router. Intrado Comm seeks to mirror the type of interconnection arrangements that Embarq has used historically with other ILECs and non-competing CLECs who are required to bring 911/E911 traffic to the entity serving the PSAP. Unless the Parties have established that it is technically infeasible to segregate end user 911 calls at the end office for delivery to the appropriate designated 911 service provider, there is no reason for 911/E911 calls to be delivered to any other location than the relevant selective router/911 tandem that is connected to the PSAP for the geographic area in which the 911/E911 caller is located. Where Embarq serves as the 911/E911 service provider, it has routinely designated the location of its selective routing access ports as the POI for telecommunications carriers seeking to gain access to the end user PSAPs to which Embarq provides 911/E911 services. And Embarq has indicated in this proceeding that the POI should be at the selective router serving the PSAP. When Intrado Comm is the designated 911/E911 service provider, the selective router serving the PSAP is Intrado Comm's selective router.

EMBARQ: Section 251(c) requires a competitive carrier to establish a POI on the incumbent carrier's network. Section 251(c) does not apply to the establishment of POIs on Intrado's network for termination of Embarq's end user 911 traffic when Intrado is the 911/E911 service provider to the PSAP.

STAFF: Staff has no position at this time.

ISSUE 3(b): **WHAT TERMS AND CONDITIONS SHOULD GOVERN POINTS OF INTERCONNECTION (POIs) WHEN EMBARQ IS THE DESIGNATED 911/E911 SERVICE PROVIDER?**

POSITIONS

**INTRADO
COMM:**

Intrado Comm has agreed with Embarq that the POI should be at Embarq's selective router when Embarq is the designated 911/E911 service provider. There do not appear to be any other issues between the Parties with respect to this issue. When the Parties are exchanging non-911 service traffic, Section 251 of the Act and the FCC's rules implementing the statute provide Intrado Comm the right to designate a single POI at any technically feasible location on Embarq's network. Embarq is not permitted to dictate the POIs that Intrado Comm may use to exchange traffic with Embarq. For example, Embarq may not require Intrado Comm to interconnect at multiple points within a LATA. In addition, each carrier is required to bear the costs of delivering its originating traffic to the POI

designated by Intrado Comm. Under Section 251, however, a competitor can agree to go to more than one point, but it cannot be compelled to do so.

EMBARQ: When Embarq is the 911/E911 service provider, the POI should be established on Embarq's network at Embarq's selective router.

STAFF: Staff has no position at this time.

ISSUE 3(c): **INTRADO REQUESTS THE USE OF A MID-SPAN MEET POINT?**

POSITIONS

INTRADO

COMM: The parties have resolved this issue.

EMBARQ: The parties have resolved this issue.

STAFF: The parties have resolved this issue.

ISSUE 4(a): **SHOULD SPECIFIC TERMS AND CONDITIONS BE INCLUDED IN THE ICA FOR INTER-SELECTIVE ROUTER TRUNKING? IF SO, WHAT ARE THE APPROPRIATE TERMS AND CONDITIONS?**

POSITIONS

INTRADO

COMM: Yes for 4(a) and 4(b). As in any competitive telecommunications market, interoperability between a competitor's network and the incumbent's is needed to ensure customers of each Party can make and receive calls seamlessly. With respect to 911 services, Embarq must ensure its network is interoperable with another carrier's network for the provision of 911 services. Interoperability ensures call transfers between selective routers to allow misdirected emergency calls to be transferred to the appropriate PSAP, irrespective of 911 service provider, while still retaining the critical caller location information associated with the call (*i.e.*, ALI). Embarq has established inter-selective router trunking within its own network and with other providers of 911/E911 services in Florida. Intrado Comm is seeking the same type of network arrangements that Embarq performs for itself and other wireline E911 network service providers for the benefit of its own PSAP customers. In addition, Intrado Comm is requesting that Embarq also transmit ALI when it performs call transfers so that the PSAP or first responder can utilize that critical information in responding to the emergency call.

The interconnection agreement serves as the framework for the interconnection and interoperability of competing local exchange networks. 911 is a local exchange network and end users (*i.e.*, PSAPs) of the 911 network should be able

to transfer 911 calls amongst themselves with full functionality; regardless of who is the designated 911 service provider for the 911 caller. Much like any "traditional" telephone exchange service, a subscriber can place calls to other subscribers without regard to who is the service provider. PSAP subscribers are entitled to the same benefits in a competitive environment. The best way to effectuate such seamless interoperability is to include provisions requiring inter-selective router trunk groups in the interconnection agreement upon request.

While Intrado Comm agrees that PSAPs should be free to specify the level of service desired including inter-tandem functionality, Intrado Comm does not agree that a formal agreement with the PSAP and Embarq is necessary before the deployment of inter-selective router trunks. Public policy dictates that carriers should be able to make inter-selective routing available to PSAP customers where such functionality is deemed a necessary component of a vibrant, reliable 911 service. In order to offer to such functionality, the Parties' agreement needs to contain provisions that reflect an understanding and agreement between the Parties that facilities will be deployed when requested. These arrangements are for the benefit of 911 callers and public safety, and should be supported by the common carriers that provide these services. There is, however, no need to include a provision in the interconnection agreement that requires the Parties to obtain a formal agreement with PSAPs as a prerequisite to deploying inter-selective router trunking.

EMBARQ: Inter-selective routing is not governed by §251(c) and, therefore, should not be included as part of a §251(c) Interconnection Agreement. Instead, these terms should be included in a separately negotiated commercial agreement.

STAFF: Staff has no position at this time.

ISSUE 4(b): SHOULD SPECIFIC TERMS AND CONDITIONS BE INCLUDED IN THE ICA TO SUPPORT PSAP-TO-PSAP CALL TRANSFER WITH AUTOMATIC LOCATION INFORMATION ("ALI")? IF SO, WHAT ARE THE APPROPRIATE TERMS AND CONDITIONS?

POSITIONS

INTRADO

COMM: See 4a above.

EMBARQ: PSAP-to-PSAP call transfer is not governed by §251(c) and, therefore, should not be included as part of a §251(c) interconnection agreement. Instead, those terms should be included in a separately negotiated commercial agreement.

STAFF: Staff has no position at this time.

ISSUE 5: SHOULD THE INTERCONNECTION AGREEMENT INCLUDE THE TERMS AND CONDITIONS UNDER WHICH EMBARQ ORDERS SERVICES FROM INTRADO? IF SO, WHAT ARE THE APPROPRIATE TERMS AND CONDITIONS?

POSITIONS

**INTRADO
COMM:**

Yes. While Embarq's interconnection agreement template contains specific provisions setting forth the process for Intrado Comm to order services and facilities from Embarq, Embarq's template does not address how Embarq will order services from Intrado Comm. As co-carriers, both Parties will be purchasing services from the other and thus both Parties' process to order services and facilities should be specified in the agreement. Embarq has not refused to use Intrado Comm's ordering process or indicated any disagreement with Intrado Comm's proposed language; it simply has indicated an unwillingness to include Intrado Comm's ordering process requirements in the agreement.

Intrado Comm will ultimately be providing web-based access to all telecommunications service providers to order services from Intrado Comm, including access to Intrado Comm. The information required by Intrado Comm to complete an order includes fields normally contained on an Access Service Request ("ASR"), which is an industry standard format developed by the ILECs. Intrado Comm's proposed language indicating that Embarq will use Intrado Comm's ordering process should be adopted for inclusion in the interconnection agreement.

EMBARQ: Section 251(c) does not govern the terms and conditions under which Embarq orders services from a competitive carrier (in this case Intrado). These terms and conditions should not be included in a §251(c) interconnection agreement but should be included in a separately negotiated commercial agreement.

STAFF: Staff has no position at this time.

ISSUE 6(b): WHAT TERMS AND CONDITIONS SHOULD BE INCLUDED IN THE ICA TO ADDRESS ACCESS TO 911/E911 DATABASE INFORMATION WHEN INTRADO IS THE DESIGNATED 911/E911 SERVICE PROVIDER?

POSITIONS

INTRADO

COMM: The Parties have agreed to the terms and conditions to be included in the interconnection agreement to address access to databases when Embarq is the designated 911/E911 service provider. The interconnection agreement should include reciprocal terms to address when Intrado Comm is the designated 911/E911 service provider. With respect to this issue, there are no technical disputes between the Parties. The only remaining issue is whether language addressing the Parties' rights and obligations when Intrado Comm is the designated 911/E911 service provider should be included in the interconnection agreement. The Parties are connecting competing carriers and therefore it is appropriate to include terms and conditions regarding Embarq's access to Intrado Comm's 911/E911 databases in the Section 251(c) interconnection agreement.

EMBARQ: Section 251(c) does not govern the terms and conditions for access to the 911/E911 database when Intrado is the designed 911/E911 service provider. These terms and conditions should not be included in a §251(c) interconnection agreement but should be included in a separately negotiated commercial agreement.

STAFF: Staff has no position at this time.

ISSUE 7: **SHOULD 911/E911 SERVICE CALLS BE INCLUDED IN THE TYPE OF TRAFFIC TO BE EXCHANGED BY THE PARTIES OVER LOCAL INTERCONNECTION TRUNKS?**

POSITIONS

INTRADO

COMM: Yes. 911 service and E911 service calls should be treated like other telephone exchange traffic. Embarq classifies the 911/E911 service it provides to PSAPs as a telephone exchange communication service that is provisioned using "exchange lines." 911 and E911 services, as local exchange services, rightfully belong in the section of the interconnection agreement addressing the interconnection of local exchange networks. A Section 251(c) interconnection agreement is the appropriate vehicle to negotiate the interconnection and mutual exchange of traffic for competing local exchange networks. Intrado Comm is seeking to launch a competitive local exchange E911 service and therefore it is entitled to interconnection pursuant to Section 251 of the Act.

EMBARQ: No. Intrado does not provide local exchange service to end users and therefore no 9-1-1 calls will be originated from Intrado's network.

STAFF: Staff has no position at this time.

ISSUE 11: HOW SHOULD THE TERM “END USER” BE DEFINED AND WHERE SHOULD IT BE USED IN THE ICA?

POSITIONS

**INTRADO
COMM:**

The term “End User” is used to describe the entity purchasing telecommunications service from either of the Parties to the interconnection agreement. Embarq’s template interconnection agreement did not contain a definition for “End User.” Embarq’s proposed definition in response to Intrado Comm’s proposed definition is too narrow because it would encompass only the individual making a 911 call. Intrado Comm proposes a definition of “End User” that would encompass any entity purchasing telecommunications services from the Parties’ tariffs, which would include PSAPs, governmental entities, or any other purchaser. Intrado Comm’s proposed interconnection agreement definition better reflects the services Intrado Comm intends to offer today and those entities that are appropriately classified as end users and eligible to purchase its services under the law. Entities like Vonage are properly classified as end users because they purchase service from telecommunications carriers like other businesses or persons that obtain local exchange services from a local exchange carrier. The FCC has long recognized that wholesale services are included in the definition of “telecommunications service” and that the term “telecommunications service” was not intend to create a retail/wholesale distinction. A provider of wholesale telecommunications service is a telecommunications carrier and is entitled to interconnection under Section 251 and the regulatory classification of the service provided to the ultimate end user has no bearing on the wholesale provider’s rights as a telecommunications carrier to interconnect under section 251.

A single definition for “End User” should apply throughout the interconnection agreement. This would eliminate confusion and avoid future disputes.

EMBARQ: The term “end user” should be defined as “the individual that makes the 9-1-1 call or the PSAP receiving the call for the purpose of initiating the emergency or public safety response.”

STAFF: Staff has no position at this time.

ISSUE 12: HOW SHOULD THE TERM “ENHANCED 911 SERVICE” BE DEFINED IN THE ICA?

POSITIONS

INTRADO

COMM: The Parties have resolved this issue.

EMBARQ: The Parties have resolved this issue.

STAFF: The Parties have resolved this issue.

ISSUE 13: SHOULD THE TERM “DESIGNATED” OR THE TERM “PRIMARY” BE USED TO INDICATE WHICH PARTY IS SERVING THE 911 AUTHORITY?

POSITIONS

INTRADO

COMM: Use of the term “designated” is more appropriate in the interconnection agreement. The term “primary” implies that there is a “secondary” provider. In a competitive 911/E911 service market, a PSAP (or other governmental entity) has the right to chose or “designate” the entity from which it seeks to purchase 911/E911 services. This is similar to presubscription. Unless the PSAP has specifically selected more than one 911/E911 service provider (*i.e.*, one provider for wireline 911/E911 calls and another provider for wireless 911/E911 calls), there is no “secondary” 911/E911 service provider. If the PSAP does select multiple providers for different types of 911/E911 services, each provider would be the “designated” provider for that type of 911/E911 service. The PSAP’s choice of carrier should not be confused with primary and secondary PSAPs, which denotes which PSAP should receive a 911 call in the first instance.

EMBARQ: The term “primary” should be used to indicate the party serving the 911 Authority. The concept of primary and secondary providers is well established in the 9-1-1 industry. The primary provider is the company with the overall responsibility for providing 911/E911 Service to the 911 Authority.

STAFF: Staff has no position at this time.

ISSUE 14: WHAT ARE THE APPROPRIATE TERMS AND CONDITIONS REGARDING AUDITS?

POSITIONS

INTRADO

COMM: Audits conducted by qualified independent third party auditors are the most equitable and effective way to resolve any suspected billing inconsistencies by either Party. The use of independent auditors is a common industry practice. The interconnection agreements of other major incumbent local exchange carriers contain specific provisions requiring the use of such independent auditors. The language requiring independent third party auditors submitted by Intrado Comm is neither onerous nor uncommon and it should be adopted. It is especially appropriate where the parties to a contract are direct competitors. An independent auditor with the auditing party incurring the costs of the audit is crucial to maintaining a balance between parties with uneven market positions. The interconnection agreement gives Embarq the ability to use the "Examination" process (ability to request specific bill information) without the need for a third party and the dispute resolution process to resolve any billing disputes between the Parties. The dispute resolution provisions of the agreement set forth a detailed process for addressing billing disputes through negotiation, escalation, and filings with the Commission, courts, or the FCC as necessary. The use of a third-party auditor would be the most extreme remedy in the event of a billing dispute. The availability of these alternate mechanisms should eliminate any cost concerns Embarq has with respect to Intrado Comm's proposed language requiring the use of third-party auditors.

EMBARQ: Embarq's language regarding the terms and conditions for audits should be approved by the Commission. Requiring all audits to be conducted by independent third-party auditors imposes unnecessary expense and the potential for dissension and delay on the audit process.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|----------------|---------------------|-----------------|---|
| <u>Direct</u> | | | |
| Thomas Hicks | INTRADO COMM | TH-1 | Intelligent Emergency Network |
| Thomas Hicks | INTRADO COMM | TH-2 | Legacy 911 Environment |
| Thomas Hicks | INTRADO COMM | Revised TH-3 | Sample Florida Call Transfer Arrangement |
| Thomas Hicks | INTRADO COMM | TH-4 | Typical Components of an E911 System |

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|--------------------------|---------------------|-----------------|---|
| Thomas Hicks | INTRADO COMM | Revised TH-5 | 911 Call Sorting at Originating Office |
| Thomas Hicks | INTRADO COMM | TH-6 | 911 Call Sorting at a Tandem Switch |
| Carey Spence-Lenss | INTRADO COMM | CSL-1 | West Virginia Order Approving Verizon 911 Tariff |
| Carey Spence-Lenss | INTRADO COMM | CSL-2 | Ohio Order |
| Carey Spence-Lenss | INTRADO COMM | CSL-3 | Ohio Order Entry on Rehearing |
| Carey Spence-Lenss | INTRADO COMM | CSL-4 | Intrado Comm Florida Tariff |
| Carey Spence-Lenss | INTRADO COMM | CSL-5 | Letters in Support |
| Carey Spence-Lenss | INTRADO COMM | CSL-6 | Amended Petition for Declaratory Statement |
| Carey Spence-Lenss | INTRADO COMM | CSL-7 | NENA Transition Effort |
| Carey Spence-Lenss | INTRADO COMM | CSL-8 | ATIS New Release |
| Carey Spence-Lenss | INTRADO COMM | CSL-9 | Embarq Florida Tariff |
| Carey Spence-Lenss | INTRADO COMM | CSL-10 | California Order |
| Carey Spence-Lenss | INTRADO COMM | CSL-11 | Illinois Order |
| James M. ("Mike") Maples | EMBARQ | JMM-1 | Typical E9-1-1 Arrangement between a CLEC and Embarq |
| James M. ("Mike") Maples | EMBARQ | JMM-2 | Typical E9-1-1 Arrangement between a CMRS Provider and Embarq |

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|--------------------------|---------------------|-----------------|---|
| James M. ("Mike") Maples | EMBARQ | JMM-3 | Typical E9-1-1 Arrangement between a VoIP Provider and Embarq |
| James M. ("Mike") Maples | EMBARQ | JMM-4 | Two Wireline E9-1-1 Providers |
| James M. ("Mike") Maples | EMBARQ | JMM-5 | E9-1-1 Arrangement between Embarq and Intrado |
| James M. ("Mike") Maples | EMBARQ | JMM-6 | E9-1-1 Arrangement between Embarq and Intrado |
| James M. ("Mike") Maples | EMBARQ | JMM-7 | E911 Service Agreement |
| James M. ("Mike") Maples | EMBARQ | JMM-8 | Jointly Provided E9-1-1 Network Services Commercial Agreement |
| James M. ("Mike") Maples | EMBARQ | JMM-9 | Proposed Terms for Intrado and Embarq |
| James M. ("Mike") Maples | EMBARQ | JMM-10 | Terms and Conditions that Reference End Users |
| James M. ("Mike") Maples | EMBARQ | JMM-11 | NENA Website – Overall NG 9-1-1 Status |

Rebuttal

| | | | |
|--------------------|-----------------|--------|--|
| Cynthia Clugy | INTRADO COMM | CC-1 | Intrado Comm Ordering Documents |
| Cynthia Clugy | INTRADO COMM | CC-2 | ILEC ICA Audit Examples |
| Thomas Hicks | INTRADO COMM | TH-7 | Intrado Comm's Proposed Rates |
| Thomas Hicks | INTRADO COMM | TH-8 | NRIC Best Practices |
| John Melcher | INTRADO COMM | JM-1 | John R. Melcher, ENP Curriculum Vitae |
| Carey Spence-Lenss | INTRADO COMM | CSL-12 | Intrado Comm Emergency Service Evolution |

| <u>Witness</u> | <u>Proffered By</u> | <u>I.D. No.</u> | <u>Description</u> |
|--------------------------|---------------------|-------------------|---|
| James M. ("Mike") Maples | EMBARQ | Revised JMM-12 | Corrected Price List Provided to Intrado |
| James M. ("Mike") Maples | EMBARQ | JMM-13 | NENA Policy Statement |
| James M. ("Mike") Maples | EMBARQ | JMM-14 | FCC Form 499-A |

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time. Intrado Comm reserves its right to raise motions at the Pre-Hearing Conference or at the Hearing as appropriate. In addition, to the extent the Parties' Direct or Rebuttal Testimony addresses issues that have been resolved, that testimony should be struck from the record.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages and shall be filed at the same time.

XIV. RULINGS

Opening presentations, if any, shall not exceed ten minutes per party. All information used in the presentation must be based on evidence in the record. Parties shall exchange multimedia presentations, if any, prior to commencement of hearing for approval. One (1) witness shall be designated to participate and shall be sworn in prior to commencement of presentation. Witness will be available during cross-examination regarding any information presented.

It is therefore,

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 17th day of June, 2008.


LISA POLAK EDGAR
Commissioner and Prehearing Officer

(S E A L)

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.