Dorothy Menasco

From: Slaughter, Brenda [bs3843@att.com]
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To: Filings@psc.state.fl.us
Cc: Carver, J; Woods, Vickie; Gurdian, Manuel; Holland, Robyn P; Eller, Perry
Subject: Docket 070736-TP
Importance: High
Attachments: 070736-TP Brief of ATT.pdf; 070736-TP BRIEF (Final) AT&T - Intrado.DOC

A. Brenda Slaughter
Legal Secretary to J. Phillip Carver, Robert A. Culpepper and John T. Tyler
AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(404) 335-0714
brenda.slaughter@att.com

B. Docket No.: 070736-TP

Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida

C. AT&T Florida
on behalf of J. Phillip Carver

D. 65 pages total (includes letter, Certificate of Service and pleading) - PDF
63 pages total - WORD in lieu of disk

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Brief

<<070736-TP Brief of ATT.pdf>> <<070736-TP BRIEF (Final) AT&T - Intrado.DOC>>

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at&t

J. Phillip Carver
General Attorney
Legal Department

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: 404.335.0710
F: 404.927.3618
j.carver@att.com

August 14, 2008

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 070736-TP: In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida

Dear Ms. Cole:

Enclosed is Brief of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Brief, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

for

J. Phillip Carver

cc: All parties of record
Gregory R. Follensbee
E. Earl Edenfield, Jr.
Lisa S. Foshee

CERTIFICATE OF SERVICE
Docket No. 070736-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail this 14th day of August, 2008 to the following:

Lee Eng Tan
Charlene Poblete
Michael Barrett
Staff Counsels
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6185
ltan@psc.state.fl.us
cpoblete@psc.state.fl.us
MBarrett@psc.state.fl.us

Chérie R. Kiser
Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
Tel. No. (202) 862-8950/8930
Fax. No. (202) 862-8958
ckiser@cgrdc.com
acollins@cgrdc.com

Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Tel. No. (850) 425-5213
Fax. No. (850) 558-0656
fself@lawfla.com

Rebecca Ballesteros
Associate Counsel
Intrado Communications, Inc.
1601 Dry Creek Drive
Longmont, CO 80503
Tel. No. (720) 494-5800
Fax. No. (720) 494-6600
rebecca.ballesteros@intrado.com

for
J. Phillip Carver

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 BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C.	Docket No: 070736-TL Filed: August 14, 2008

AT&T FLORIDA'S POST-HEARING BRIEF

E. EARL EDENFIELD, JR.
TRACY W. HATCH
MANUEL A. GURDIAN
c/o Gregory R. Follensbee
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

LISA S. FOSHEE
J. PHILLIP CARVER
AT&T Southeast
Suite 4300, AT&T Midtown Center
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0710

ATTORNEYS FOR AT&T FLORIDA

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STATEMENT OF THE CASE

On December 21, 2007, Intrado Communications, Inc. ("Intrado") filed a Petition seeking arbitration of the rates, terms and conditions of an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act"). On January 15, 2008, AT&T Florida filed its Response. Thirty-six issues were subsequently identified for resolution in this proceeding (57 including all subparts). (*Order Establishing Procedure*, Order No. PSC-08-0171-PCO-TP, issued March 21, 2008, Appendix A). Nineteen of the fifty-seven issues were subsequently resolved by the parties.[1]

A hearing was held on the remaining unresolved issues on July 10, 2008. AT&T Florida presented the testimony of Patricia Pellerin and Mark Neinast. Testimony was also presented by Intrado witnesses Thomas Hicks (who also adopted the prefiled testimony of Carey Spence-Lenss), Cynthia Clugy and John Melcher. The hearing produced a transcript of 469 pages and 49 exhibits.

STATEMENT OF AT&T FLORIDA'S BASIC POSITION

The 38 identified issues that remain open in this arbitration fall into three categories. First, Issue 1 presents the threshold question of whether Intrado will provide services that are the proper subject of an Interconnection Agreement pursuant to Sections 251 and 252 of the Act. The answer is that Intrado does not seek interconnection to provide telephone exchange service or exchange access service. Thus, under the express terms of Section 251, Intrado is not entitled to an Interconnection Agreement.

[1] The resolved issues are 7(b), 8(b), 11, 12, 14(a), 14(b), 16, 17(a), 17(b), 19, 21, 26, 27(a), 27(b), 28, 30(a), 30(b), 31 and 32.

Second, most of the remaining issues involve the largely inexplicable insistence of Intrado that the parties utilize as the template for the Interconnection Agreement the AT&T form agreement utilized in the 13-state region outside of AT&T's Southeast region, rather than the 9-state template that is adapted specifically for use in Florida and the other Southeast States. Use of the 9-state Agreement will resolve many of the open issues in this proceeding.

Third, Intrado has raised a number of technical issues, *e.g.*, points of interconnection and call routing. In each instance, Intrado seeks an inefficient and largely untested arrangement that would serve no purpose other than to shift Intrado's costs of doing business to AT&T Florida. The Commission should reject each of these proposals by Intrado.

Issue 1 (subparts a and b) raises the question of whether Intrado is providing, or intends to provide, services that are within the proper scope of an Interconnection Agreement pursuant to Section 251(c) of the Telecommunications Act. AT&T Florida submits that Intrado's intended emergency service offerings do not constitute telephone exchange service or exchange access, and therefore, do not qualify for inclusion in a Section 251 Interconnection Agreement.[2] Specifically, Intrado contends that these emergency services constitute exchange services. They do not. Exchanges services, by definition, can be used to both originate and terminate calls. Intrado's proposed emergency service cannot be used by Public Safety Access Points ("PSAPs") to originate calls. For this reason, the Commission should find in AT&T Florida's favor on Issue 1 and deny Intrado's entire request for an Interconnection Agreement. If the Commission makes this decision, there is no need for further consideration of any of the remaining issues in this proceeding. That is, a determination that Intrado is not entitled to a Section 251 Interconnection Agreement renders all other issues moot.[3]

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[2] Instead, Intrado may obtain the wholesale services it requires through non- Section 251 commercial agreements and/or tariffed AT&T Florida offerings.

[3] As set forth above and in AT&T Florida's position statement on Issue 1, Intrado is not entitled to a Section 251 interconnection agreement for any services other than for telephone exchange service and exchange access. Again, if the Commission finds in AT&T Florida's favor on Issue 1, the remaining issues are moot. For purposes of brevity,

Even if the Commission determines that Intrado is entitled to an Interconnection Agreement pursuant to Section 251, Issue 2 still provides the means to resolve all or part of 21 of the remaining open issues. AT&T Florida offered Intrado as the starting point for negotiations a template agreement specifically designed for use in its 9-state Southeast region (which was formerly the BellSouth region). This template accommodates the unique state-specific legal and regulatory requirements for each of the states in the Southeast region, including Florida. This agreement also reflects the technical and operational requirements and capabilities of the regional network. Nevertheless, Intrado has demanded the use of the generally inapplicable template Agreement that AT&T uses in the 13 states outside of its Southeast region. The Commission should order the use of the 9-state template Agreement.[4]

Use of the 9-state Agreement will obviate the need for further consideration of 15 identified issues, and will also partially resolve six other issues. Specifically, for four of these issues, Intrado has raised disputes over language in the 13-state Agreement that does not appear in the 9-state Agreement. These include all of Issues 13(b), 15, 34(a) and 34(b). A decision on Issue 2 to utilize the 9-state Agreement will resolve those four issues entirely. The use of the 9-state Agreement would also avoid disputes over certain language included in, and partially resolve, Issues 4(b), 4(c), 7(a), 9, 13(a) and 29(a). Also, there are 11 issues that arise solely in the context of the 13-state Agreement for which there are no substantive disputes. That is, the parties have agreed to language (in the context of negotiations in Ohio) relating to these issues for use in the 13-state Agreement. Thus, the Commission's decision on Issue 2 will necessarily resolve these issues in their entirety. If the Commission orders the use of the 9-state Agreement, these issues are moot because the 9-state template does not include any of the resolved language from the 13-state Agreement. If the

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AT&T Florida will not repeat its position that Intrado is not entitled to a 251 interconnection agreement in each of the remaining position statements, but this argument is reserved.

[4] AT&T Florida notes that Issue 2, discussed further below, does not include any disputes relative to 911 service as AT&T Florida has removed 911 services out of the 9-state versus 13-state debate and placed the terms and conditions related to 911 service in two distinct appendices (Appendix 911 and Appendix 911 NIM) in order to accommodate Intrado's request for consistent terms and conditions for the services it intends to provide.

Commission orders the use of the 13-state Agreement, this previously disputed, now resolved language can simply be adopted. No further action is required. These issues are 18(a), 18(b), 20, 22, 23, 25(a), 25(b), 25(c), 25(d), 33 and 35.

If the Commission orders the use of the 9-state Agreement, only a handful of technical issues will remain to be resolved. In these remaining technical issues, there is an overriding dispute concerning Intrado's approach to its cost to provide service. Specifically, AT&T Florida believes that Intrado should bear the costs it causes, just as it would if it were obtaining wholesale inputs to its emergency services outside of the context of a Section 251 Interconnection Agreement. Intrado, however, has repeatedly attempted to misuse Section 251 as a means to obtain a one-sided and inequitable agreement that would shift Intrado's costs of doing business to AT&T Florida. Although Intrado devotes a great deal of testimony to trumpeting the ostensible superiority of the technical network arrangements it seeks, the reality is markedly different. Careful scrutiny of Intrado's proposals reveal them to be an unworkable collection of attempts to implement complex, inefficient and largely untried network arrangements, and to do so at AT&T Florida's expense. The Commission should reject these proposals.

STATEMENT OF AT&T FLORIDA'S POSITIONS[5]

Issue 1(a): What service(s) does Intrado Comm currently provide or intend to provide in Florida?

**AT&T Florida's Position: Intrado only provides or intends to provide emergency services to PSAPs, not telephone exchange service or exchange access.

Issue 1(b): Of the services identified in 1(a), for which, if any, is AT&T required to offer interconnection under Section 251(c) of the Telecommunications Act of 1996?

**AT&T Florida's Position: None. AT&T Florida is only obligated to offer Section 251(c) interconnection for telephone exchange service and exchange access.

Determining whether Intrado is entitled to a Section 251 Interconnection Agreement involves two steps. First, it is necessary to determine the type of service that Intrado intends to provide. Second, it is necessary to determine whether AT&T Florida's interconnection obligations pursuant to Section 251(c) apply to this type of service. This process necessarily yields the conclusion that Intrado is not providing services subject to Section 251, and that it is not entitled to the Section 251 Interconnection Agreement. This conclusion should end the Commission's

[5] This section addresses AT&T Florida's position on the issues that remain open. Identified, but resolved, issues are not listed herein. These issues are 7(b), 8(b), 11, 12, 14(a), 14(b), 16, 17(a), 17(b), 19, 21, 26, 27(a), 27(b), 28, 30(a), 30(b), 31 and 32. In some instances, sub-issues have been combined, so that a single position is stated for two or more issues.

consideration of Intrado's arbitration request. In other words, the proper denial of this request obviates the need to entertain any of the other issues in this proceeding.[6]

During cross examination, Mr. Hicks agreed that the service Intrado intends to provide is limited to aggregating emergency 911 calls at its "selective router for delivery to an Intrado-served public safety answering point". (Tr. 169). It is not Intrado's intention to serve the end users who place 911 calls. Instead, Intrado will aggregate the traffic from the end users/customers of other carriers, including "wireline, VOIP and wireless providers", for delivery to its customer, the PSAP. (*Id.*) Thus, Intrado clearly contemplates an arrangement in which calls will always flow in only one direction. In this regard, Intrado's witness, Carey Spence-Lenss specifically stated in her prefiled testimony that 911 trunks are one-way trunks. (Tr. 152).[7] This service does not qualify for a Section 251 Interconnection Agreement because it does not constitute telephone exchange service or exchange access service.

Section 251(c)(2)(A) specifically provides that the ILEC's duty is to interconnect "for the transmission and routing of telephone exchange service and exchange access". During the hearing, Mr. Hicks admitted that "Intrado is only entitled to a 251 interconnection agreement if the service that it is offering to PSAPs is either an exchange service or an exchange access service." (Tr. 173). Mr. Hicks also admitted that Intrado does not contend that the service Intrado will provide is an exchange access service. (Tr. 173-74). Thus, the only question is whether this service constitutes an exchange service. The Act makes clear that this is not the case.

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[6] To the extent Intrado wishes to obtain from AT&T Florida what it needs to compose an E911 service to offer to PSAPs, it can do so by negotiating commercial agreements and/or by purchasing from AT&T Florida's tariffs.

[7] This, and other portions of the record appeared in the pre-filed testimony of Intrado witness, Carey Spence-Lenss. Ms. Spence-Lenss did not attend the hearing, however, and her pre-filed testimony was adopted by Intrado's witness, Thomas Hicks, which technically makes this the testimony of Mr. Hicks. Nevertheless, for clarity's sake the pre-filed testimony of Ms. Spence-Lenss will be referred to herein as such, rather than as the testimony of Mr. Hicks.

Specifically, 47 U.S.C. 153(47) defines telephone exchange service as follows:

> TELEPHONE EXCHANGE SERVICE – The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can *originate and terminate a telecommunications service.*

(emphasis added)

Thus, to qualify as a telephone exchange service the service must be 1) related to exchange boundaries, or 2) capable of both originating and terminating calls (*i.e.*, the customer must be able to both place calls and to receive them, not just terminate 911 calls to a PSAP). The service that Intrado intends to provide to PSAPs does not qualify as telephone exchange service because it operates independent of exchange boundaries and cannot be used to originate calls.

Intrado appeared to agree that its proposed emergency services are not exchange services when it filed its tariff for the subject services on October 27, 2007. Specifically, Intrado filed a tariff for what it called "Intelligent Emergency Network™ (IEN)" service. (Tr. 256). Intrado's tariff described the IEN service as one that permits "a Public Safety Answering Point (PSAP) to receive emergency calls".[8] Intrado's tariff then stated Intrado's view as to what constitutes local exchange service, as follows:

> The furnishing of telecommunications services by a Local Exchange Provider to a Customer within an exchange for local calling. This service also provides access to and from the telecommunications network for long distance calling. *The Company is not responsible for the provision of local exchange service to its Customers.*[9]

Since Intrado filed its arbitration petition, its story has changed drastically. Intrado now claims that it does provide exchange service, even though the proposed service is precisely the same as contemplated in the tariff filed less than a year ago. Nevertheless, the fact remains that,

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[8] Intrado Tariff, Section 5.1, quoted at Tr. 256.
[9] Intrado Tariff, Section 1, (*Id.*). (emphasis added).

regardless of how Intrado chooses to classify its proposed emergency service, this service cannot be used to originate a call, and, therefore, fails to qualify as exchange service as a matter of law.

In her prefiled testimony, Ms. Spence-Lenss claimed that Intrado-provided services "are capable of originating a call in a conferencing capacity". (Tr. 152). By the time of the hearing, however, Mr. Hicks (who adopted the testimony of Ms. Spence-Lenss) was much less emphatic on this point. Specifically, he testified as follows:

> Q. ... Let's talk a little bit about two-way traffic. Now in your deposition you said that PSAPs can use the service that Intrado will provide to originate calls; correct?
>
> A. The services that the PSAP uses would only be able to generate and originate a call transfer. They would not be able to utilize the Intrado Communications offering to generate a traditional local call. They would basically use the telephone lines that were purchased from their local service provider.
>
> Q. Okay. So in this case you're talking about a situation where a customer, and by customer let's say an AT&T customer that has local telephone service, they call 911, they reach a PSAP. The PSAP can transfer that call to another PSAP. That's what you're saying?
>
> A. Yes, sir.
>
> Q. Okay. Now let's assume in this situation that the caller calls the PSAP, the operator has them on the line and the caller is disconnected. Can the PSAP operator use the service that you're going to provide to them to call the customer back?
>
> A. No, sir. They have to access one of their administrative lines that are connected to their system and generate a call through the local PSTN.
>
> Q. Okay. Now let's assume that for purposes of this question that the PSAP has not received an incoming call from a customer that's trying to access 911. Without that customer originating the call to them, can they just call another PSAP?
>
> A. Not through the Intrado Communications service offering.

(Tr. 178-79)

****

Q. Now you've told me so far they can't use that service to call the customer back, they can't use that service to originate a call to another PSAP. Can they use that call to -- can they use that service to originate a call to anyone else?

A. No, sir.

Q. Okay. Now in this situation, let's get away from the transfer a little bit, when a 911 customer picks up the phone and dials 911 and gets to the PSAP, it's the 911 caller who originates that call; correct?

A. Yes, sir.

(Tr. 180).

****

Q. ... I'm trying to understand your testimony. Are you saying that when the 911 caller makes the call, then they originate the call, and then when the PSAP transfers the call, then they originate the same call?

A. No. When they, when the -- no. I'm not saying that. What I'm saying is when the PSAP receives the call and executes a transfer, that transfer is through the intelligent communications network, the Intelligent Emergency Network. It is not over the Public Switched Telephone Network.

Q. Okay. But it's -- but I'm asking you about call origination. Is it your position that the transfer constitutes an origination of the call that the 911 caller has already placed?

A. No, sir. It's not an origination. It's basically a transfer.

Q. Okay. So what we know about this service is you can't call out at all. All you can do is transfer a call after it's been originated by the 911 caller; correct?

A. That's correct. Yes, sir.

(Tr. 181).

Clearly, by Mr. Hicks' own admissions, the service Intrado intends to sell to PSAPs cannot be used to originate a call.

Despite the obvious facts, Intrado contends in Ms. Spence-Lenss' pre-filed testimony that the service Intrado offers is very much like the emergency service offered by AT&T Florida, and that AT&T Florida refers to this service in its tariff as a "telephone exchange communication service". (Tr. 151). Thus, Intrado appears to argue that the language in AT&T Florida's tariff basically estops it from pointing out that emergency service does not qualify as an exchange service. It is noteworthy that Intrado views AT&T Florida as being bound by four words that appear in a tariff, even though it reverses the position that is set forth extensively in its own tariff, *i.e.*, that its emergency service is not a local exchange service, and that Intrado will not provide local exchange service.

Also, AT&T Florida's witness, Patricia Pellerin pointed out that Intrado's interpretation of AT&T Florida's tariff is flawed. As Ms. Pellerin testified, AT&T Florida refers to the service as telephone exchange communication service, because it is a communication service that is offered in an exchange. (Tr. 329). Moreover, as Ms. Pellerin also testified, "[I]t is obvious that Intrado intends to provide 911 services differently than AT&T Florida does. Thus, even if AT&T Florida's E911 services were deemed to be local exchange services ... it does not automatically follow that Intrado's 911 services would be properly classified as local exchange services as well." (Tr. *Id.*). Finally, the AT&T Florida tariff to which Ms. Spence-Lenss cites states that the service is for "answering, transferring and dispatching" in response to 911 calls. The tariff does not state that the emergency service can be used to originate calls. Thus, even if Intrado's proposed emergency service were the same as AT&T Florida's, it is clear that AT&T Florida's emergency service is not a local exchange service either.

Intrado's argument regarding tariff language is ultimately of no consequence. Whether Intrado is providing exchange service or not -- and is, therefore, entitled to an interconnection agreement under the Act or not -- is defined by the Act itself. Even if AT&T Florida's tariff could

be interpreted as Intrado claims, this would prompt nothing more than the conclusion that AT&T Florida's tariff has inaccurately characterized AT&T Florida's emergency service. This error, even if it did exist, would do absolutely nothing to change the requirements of the Act, or the fact that Intrado fails to comply with these requirements. Because the service that Intrado intends to provide to PSAPs cannot be used to originate calls (nor is it in any way related to exchange boundaries), this service does not qualify as exchange service. Accordingly, Intrado does not qualify for a Section 251 Interconnection Agreement, and the Commission should reject Intrado's request for such an Agreement.

> **Issue 1(c): Of the services identified in 1(a), for which, if any should rates appear in the ICA?**
>
> **AT&T Florida's Position: None. See part (b).
>
> **Issue 1(d): For those services identified in 1(c), what are the appropriate rates?**
>
> **AT&T Florida's Position:Not applicable. Nevertheless, AT&T Florida's rates are included in its ICA rate tables and/or its tariffs. Intrado proposes rates based on its commercial service offering Generally, Intrado's ICA rates to AT&T Florida should not exceed AT&T Florida's ICA rates to Intrado for reciprocal services.

For the reasons set forth above, Intrado is not entitled to an Interconnection Agreement. Accordingly, the Commission should deny Intrado's request in its entirety, which would, of course, obviate the need to consider any rate issues. In the event the Commission does determine that Intrado is entitled to a Section 251 Agreement, and proceeds to set rates, the Commission should adopt the rates proposed by AT&T Florida on a reciprocal basis.

As Ms. Pellerin testified, "AT&T Florida has proposed its generic non-recurring charges for interconnection trunks as set forth in its 9-state pricing attachment to ICA Attachment 3". (Tr. 330). AT&T Florida has also provided a price list of "non-recurring charges and monthly recurring rates

for local interconnection transport that could apply, depending on Intrado's interconnection arrangement to AT&T Florida". (*Id.*). Intrado does not appear to object to these rates. Moreover, Intrado seems generally to support the idea that terms and conditions between the parties should be reciprocal. Thus, it should have no objections to the parties charging one another reciprocal rates to the extent that charges are necessary.

Nevertheless, Intrado has developed its own price list, which includes different charges. As Ms. Pellerin noted, the price list appears to indicate that Intrado proposes to charge AT&T Florida for port charges as if the parties had a commercial agreement under which AT&T Florida was purchasing Intrado's IEN Service. (Tr. 331). In other words, Intrado appears to intend to charge commercial rates to AT&T, while it advocates that it be charged lower rates by AT&T. Intrado should not be allowed to impose its commercial rates on AT&T Florida. (*Id.*). AT&T Florida submits that the Commission should reject Intrado's approach, and order that the parties charge one another reciprocal rates.

Issue 2: Is AT&T's 9-state template interconnection agreement the appropriate starting point for negotiations? If not, what is?

**AT&T Florida's Position: Yes. AT&T's 9-state template was specifically designed for use in the 9-state (former BellSouth) territory. In contrast, the 13-state template, which was designed for use in AT&T's 13-state (former SBC) territory, does not address the network configuration or systems in use in Florida.

AT&T Florida advocates for use as a template agreement the 9-state Agreement that AT&T Florida makes available in Florida, that has been utilized on many occasions for prior interconnection agreements in Florida, and that is adapted specifically for use in the 9-state region including Florida. As Ms. Pellerin testified, the 9-state template "reflects the appropriate terms and conditions and network architecture for services AT&T offers in the 9-state region and accommodates the unique state-specific legal and regulatory requirements, network, technical,

operational, operation support systems ("OSS"), policies, etc., for the former BellSouth region, including Florida". (Tr. 269).

In contrast, Intrado proposes that the Commission order the use of the 13-state Agreement, which was designed for use in the 13 AT&T states outside of the former BellSouth region, which has always been used in those 13 states, and which no Commission has ever ordered for use in any of the nine Southeast states. Neither has this 13-state Agreement been the basis for a voluntarily negotiated agreement between AT&T and any CLEC in the 9-state Southeast region. As Ms. Pellerin testified "the 13-state template was designed for CLEC ICAs in AT&T's 13-state (former SBC) territory and does not accommodate the particular characteristics present in Florida." (*Id.*).

The choice between a template designed specifically for use in Florida and a template that was designed for use in other states would seem to be an easy one. Clearly, the template that is designed for use in Florida and the other eight Southeast states is the better choice. Moreover, Intrado has not offered any compelling reason to deviate from this choice. Specifically, in her pre-filed testimony, Ms. Spence-Lenss stated only that Intrado desires a single agreement for the entire 22 states. (Tr. 138-39). Intrado offers no indication as to why it believes its desire for a single agreement should necessarily mandate the use of the 13-state Agreement rather than the 9-state Agreement.

Moreover, Intrado's witnesses ignore the fact that AT&T Florida has offered standard offerings and capabilities for the portions of the Agreement that are most likely to apply to Intrado. Specifically, AT&T Florida has negotiated with Intrado appendices identified as Appendix 911 and Appendix 911 NIM, that contain virtually all of the terms and conditions that relate specifically to the functionality Intrado seeks for the services it will provide to PSAPs. In this regard, Ms. Pellerin stated the following:

> AT&T Florida recognizes that Intrado's business plan is limited to the provision of emergency services. Accordingly, AT&T Florida offered (and Intrado agreed) to use two discrete appendices (Appendix 911 and Appendix 911 NIM) to memorialize the terms and conditions for 911 service across AT&T's operating territory. The parties have agreed to delete any 911-related terms and conditions from the standard interconnection attachments.

(Tr. 334).

Thus, AT&T Florida *is* offering a single set of uniform contractual provisions that relate to what Intrado will actually utilize from the Interconnection Agreement. This means that the entire subject dispute is over what to use as the "boiler plate" in the Agreement, *i.e.*, the general terms and conditions and appendices unrelated to 911 service (most of which are unlikely ever to be used by Intrado). Given this, it is difficult to understand why Intrado would object so strongly to using the 9-state Agreement. Moreover, Intrado's testimony provides little clue.

Specifically, even though the 9-state Agreement was provided to Intrado almost a year ago, and the parties commenced and engaged in negotiations from this template (Tr. 276), Ms. Spence-Lenss' pre-filed testimony states that Intrado has never conducted a "thorough review". (Tr. 161). Although Intrado obviously deems the 9-state Agreement less suitable than the 13-state agreement, Intrado cites to no particular provision of the 9-state Agreement it finds unsuitable. Instead, Intrado attempts to shift the burden to AT&T Florida by claiming that AT&T Florida has not identified why the 13-state Agreement could not be used. (Tr. 163). Ms. Pellerin testified that an exhaustive review of the 13-state Agreement, and identification of all the potential problems that might arise if it were implemented in the 9-state region, is an extremely labor intensive task that AT&T Florida should not be required to undertake simply because Intrado expresses a preference for the 13-state Agreement. (Tr. 335-38). However, Ms. Pellerin did specifically cite during the hearing a number of ways in which the 13-state Agreement would fail to properly function in the 9-state region. Specifically she testified as follows:

> As I stated, the thirteen-state template was written for the SBC states, not for the BellSouth states. There are a number of areas where the thirteen-state contract language simply does not work for Florida. Here's a few examples. In the thirteen state region, for the most part, the parties have actual usage recordings from which to bill for non-911 traffic that the parties exchange. But in Florida, due to switch recording and billing limitations, non-911 traffic is build based on percentage factors. An example would be 72 percent local and 28 percent toll. Parties apply these factors to a big bucket or buckets of minutes to create their intercarrier compensation bills.
>
> Another example would be the way the trunk groups are defined and how traffic is routed, which are different between the states. Also, collocation is handled differently. For instance, in some cases there is nine state pricing which Intrado says it will accept, but there are no comparable terms and conditions in the thirteen-state, so it is unclear how those rates would be applied.

(Tr. 348).

The fact that the 13-state Agreement does not work in the 9-state region from an operational standpoint is not the only problem. Also problematic is the fact that the use of the 13-state Agreement would needlessly complicate both the Agreement itself and the process of setting the terms of the Agreement.[10] To date, Intrado's insistence on the 13-state Agreement has resulted in a proliferation of issues that are largely unrelated to the central legal and technical disputes between the parties. Many of the issues in this proceeding that remain unresolved relate specifically to disputes over language in the 13-state Agreement that do not exist if the 9-state Agreement is used. Specifically, issues 13(b), 15, 34(a) and 34(b) would become moot if the commission were to use the 9-state Agreement. Use of the 9-state Agreement would also avoid disputes over at least some of the language included in, and partially resolve, issues 4(b), 4(c), 7(a), 9, 13(a), and 29(a).

Finally, there are eleven issues in the proceeding that not only arise solely in the context of the 13-state Agreement, but that have also been resolved in the context of that Agreement during negotiations in Ohio. These issues are 18(a), 18(b), 20, 22, 23, 25(a), 25(b), 25(c), 25(d), 33 and 35.

[10] In fact, a decision by the Commission that the parties must utilize the 13-state template in Florida would require additional months to assess and would give rise to numerous additional issues that are as yet unidentified. (Tr. 276).

As to these, if the Commission orders the use of the 13-state Agreement, then it needs simply to place into the arbitrated agreement the language that has been agreed between the parties in the context of the Ohio negotiations. Should the Commission choose the 9-state Agreement, then these issues become moot.

Intrado has, of course, requested that the Commission interject the negotiated language for these 11 issues into the 9-state Agreement, even if the commission selects the 9-state Agreement rather than the 13–state Agreement. As Ms. Pellerin testified, however, this request really makes no sense. (Tr. 349). The 13-state Agreement includes thousands of provisions, most of which are not in dispute. These eleven issues pertain to language that was once in dispute, but has now been resolved. Thus, these eleven issues currently have the exact same status as all the other provisions in the 13-state Agreement that were never in dispute. There is no reason for the Commission to treat these particular issues any differently from all the other currently undisputed portions of the 13-state Agreement. Instead, the Commission should simply make a decision to utilize either the 13-state Agreement or the 9-state Agreement. There is no reason to provide for special handling of the issues in the 13-state Agreement that were once disputed, but are not longer in dispute.

Again, the choice between the 9-state Agreement and the 13-state Agreement is clear. The 9-state Agreement was developed specifically for use in the 9-state region, including Florida. The 13-state Agreement has never been used in the 9-state region, nor has it ever been ordered by a Commission in the 9-state region. Use of this agreement would likely give rise to a myriad of problems that, at this juncture, cannot even be fully anticipated. Finally, use of the 9-state Agreement will obviate the need for further consideration of all or part a total of 21 of the thirty-eight issues that remain unresolved. For all these reasons, the commission should order the use of the 9-state Agreement.[11]

[11] AT&T Florida recently made a 22-state template Agreement available to CLECS on July 1, 2008. This 22-state Agreement incorporates portions of the 13-state and 9-state Agreements into one Agreement.

Issue 3(a): What trunking and traffic routing arrangements should be used for the exchange of traffic when Intrado Comm is the Designated 911/E911 service provider?

**AT&T Florida's Position: The AT&T Florida E911 systems that are in place today should be continued. These systems provide reliable E911 service with accurate automatic location identification. Intrado's insistence that AT&T Florida re-engineer its network (and, thereby severely compromise network reliability) to reduce Intrado's cost of doing business should be rejected.

This issue, of course, involves the question of how to route calls to PSAPs[12]. Intrado asserts that the Commission should order that the system that is currently used for routing should be effectively junked in its entirety and replaced by the use of call sorting at the originating caller's switch . This sorting is sometimes referred to as "class marking" and at other times as "line attribute routing". By any name, Intrado has proposed a costly, technically flawed, patently unreliable, and untested, process. Moreover, Intrado has proposed this process to replace one that is currently in place, and that works quite well – even though the entire dispute between the parties arises only in a limited context.

As Mr. Neinast testified, in a wire center in which all customers are served by a PSAP to which Intrado provides emergency services, "AT&T Florida will establish a direct trunk group to the Intrado selective router without providing any additional switching". (Tr. 429). In this instance, there is no necessity to utilize class marking *or* the current system of selective routing. Thus, despite the scope of Intrado's proposal, this issue is actually quite limited, *i.e.*, it is limited to situations involving split wire centers.

[12] The term "interselective routing" is utilized in both the context of this issue and in the context of issue 5, which relates to the ability of PSAPs to transfer calls directly to other PSAPs. These are, however, discreet issues that turn upon different considerations.

Regarding split wire centers, Mr. Neinast testified that, "a wire center boundary follows the local loop cable footprint serving a specific geographic area and may or may not overlay municipal jurisdictions". (Tr. 389). Thus, if, for example, a wire center covers parts of two counties, each of which is served by a different PSAP, it is necessary to have a mechanism in place to determine how to route the calls to the correct PSAP. There is nothing in this situation that is unique to Intrado, or to the service it proposes to provide. This issue frequently arises today between ILECs that serve contiguous areas within a single county-wide or municipal jurisdiction. AT&T Florida proposes to utilize selective routing to handle these situations for Intrado precisely as it currently does for other ILECs. (Tr. 391).

Specifically, a determination is made as to which carrier provides service to the PSAP that serves the majority of the customers in the wire center. The selective router of this carrier is designated as the Primary Selective Router. The selective router of the other carrier is designated as the Secondary Selective Router. Then, as Mr. Neinast testified, "all calls from split wire centers would route to the Primary Selective Router, where a determination would be made via the ALI database to route the call directly to a PSAP or deliver the call to the Secondary Selective Router for delivery to a PSAP". (Tr. 391-92).

Again, the designation of a router as primary or secondary would be based entirely on which carrier serves the PSAP that provides 911 service to the majority of the end users in the wire center. Thus, for example, if in a particular wire center, Intrado served a PSAP serving 80% of the end users, then Intrado's selective router would be designated as the Primary Selective Router. This is a

simple, straight-forward system that has been in place for some time, that functions extremely well, and that should be allowed to continue to function.[13]

During the hearing, Mr. Hicks claimed that line attribute routing was superior "to the method that AT&T currently uses to route 911 calls". (Tr. 182). Although Mr. Hicks cited nothing to support this view, the fact that Intrado advocates that the current system be discarded in favor of a new "superior" system creates an insurmountable legal impediment to Intrado's position. Specifically, Section 251(c)(2)(C) requires the ILEC to offer interconnection that is "at least equal in quality to that provided ... to itself, or to any subsidiary, affiliate or any other party to which the carrier provides interconnection". This is precisely what AT&T Florida has done: offered to Intrado the same routing method that it offers to other carriers. AT&T Florida is under no legal obligation to discard the current system and to replace it with a new, ostensibly superior system, which AT&T Florida does not utilize and that it does not provide to any third party carrier. Under the above-quoted language of Section 251 (c)(2)(C), Intrado has no right within the context of an Interconnection Agreement to demand the implementation of a new call routing process. This language, standing alone, is sufficient to mandate that the Commission reject Intrado's proposal.

Moreover, even if one goes beyond the legal impediment to Intrado's argument, there is nothing to support Intrado's assertion that line attribute routing is superior to the current system. Mr. Hicks admitted that Intrado is not currently functioning as the E911 service provider for any PSAP in the United States. (Tr. 169). Mr. Hicks further admitted that there is currently no ILEC anywhere in the United States that utilizes line attribute routing. (Tr. 183). Although Mr. Hicks claimed that some CLECs use line attribute routing, he was not able to name a single such CLEC. (Tr. 184). Mr. Hicks admitted he had absolutely no idea what it would cost AT&T Florida to implement line attribute routing in Florida, and he also had no idea how long it would take to do so.

[13] Mr. Hicks claimed in his pre-filed testimony that there is the theoretical possibility of technical problems with the current arrangement because it requires an additional switch before the traffic is delivered. (Tr. 81). Mr. Hicks, however, did not cite to any instances in which problems have arisen.

(Tr. 186-87). Finally, given his complete lack of knowledge as to the logistical and technical requirements of Intrado's proposal, Mr. Hicks admitted that Intrado's proposal that the Commission order line attribute routing is simply not reasonable. (Tr. 187-88).

Specifically, Mr. Hicks agreed during cross examination that the Commission should not approve any proposal it found to be unreasonable. (Tr. 170). Mr. Hicks also agreed that, in determining the reasonability of a proposal the Commission should consider, at a minimum, "technical feasibility, cost and time to implement." (Tr. 171). Finally, after admitting that he could provide the Commission with absolutely no information on these crucial points, the following question and answer occurred:

> Q. ...If you can't tell ... [the Commission] ... the cost and if you can't tell them the time to implement, then you can't represent to them that this is a reasonable request; isn't that correct?
>
> A. That's probably correct, sir.

(Tr. 187-88).

Mr. Hicks, however, was perfectly clear on one point: Intrado is not volunteering to pay one penny of these implementation costs. Instead, under Intrado's proposal, the cost to implement line attribute routing would "be borne by AT&T". (Tr. 188).

In contrast, AT&T Florida's witness, Mark Neinast, provided a great deal of information about line attribute routing (a/k/a class marking), and the reasons it is costly, unreliable and unworkable. Mr. Neinast testified specifically that AT&T Florida has never used class marking for 911 calls. (Tr. 393). Mr. Neinast also stated that NENA does not recommend the use of class marking, and that there are a myriad of problems with class marking. (Tr. 394-95). Specifically, "class marking is expensive, requiring costly changes at both the wire center level and on each individual line, and presents serious reliability concerns by replacing the use of a central database,

where all the relevant information is maintained, with reliance on changes being made at every affected wire center". (Tr. 394).

Mr. Neinast also noted that class marking "would require that special, complicated switch translations (software) be built into every split wire center switch for every class of service (*e.g.*, 1FR and 1FB) and for each PSAP served within a split wire center office. This would require thousands of minute translation changes across the network, along with a parallel amount of changes in provisioning and billing systems that would be required to properly identify which street addresses should route to which PSAPs." (Tr. 395). After these system changes are completed, then it would be necessary to convert every single customer line. "Each line would require a service order to be issued to change the properties associated to the individual customer service to 'Class Mark' that line to the correct PSAP". (*Id.*). As Mr. Neinast also testified, "these kinds of changes are extensive, time consuming, and present innumerable opportunities for human errors or other errors that would reduce the reliability of 911 service in split wire centers". (*Id.*). Put simply, there is absolutely no evidence before the Commission to support the adoption of line attribute routing, and a myriad of evidence that supports the rejection of line attribute routing.

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The call routing issue involves two side issues introduced by Intrado, both of which reveal much as to what this issue is really about. First, Intrado takes the position that if the Commission does not adopt class marking, then it should simply make Intrado's selective router the primary router in all cases. Intrado criticizes selective routing on the one hand because it introduces additional switching and the theoretical possibility of technical problems. Yet, at the same time, Intrado's alternative request is that it be the Primary Selective Router, even if it serves a PSAP that will handle only, for example, five percent of the calls in any given area (thus requiring that 95 percent of the calls be rerouted and therefore switched twice). As Mr. Neinast testified on this point, "the Commission should reject Intrado's proposed language because it seeks to shift costs it

should bear to AT&T Florida and/or imposes unnecessary and unwarranted costs on AT&T Florida -- giving Intrado an unearned and unfair competitive advantage". (Tr. 396).

Second, Intrado seeks to interject into this issue a pricing issue that really has nothing to do with the routing question at all, and is not even appropriate for inclusion in the arbitration of a Section 251 Agreement. Mr. Neinast testified that in the process now in place, "the carrier designated as the Primary Selective Router bills the PSAP that ultimately receives the call for selective router functionality". (Tr. 396). Nevertheless, Intrado makes the incomprehensible claim that this routing function provides nothing to the PSAP, and that therefore, AT&T Florida should not be allowed to charge the PSAP. (Tr. 116). The obvious flaw in Intrado's position is that the purpose of this arbitration is to arrive at a set of rates, terms and conditions for interconnection between the parties, not to determine what a third party should or should not be charged for services that are provided by either party.[14] Nevertheless, Intrado attempts to inappropriately interject this issue into this arbitration.

Moreover, Intrado makes the astounding, and demonstrably false, claim that this issue has already been resolved in the context of its Petition For Declaratory Statement. Specifically, Intrado states that the Commission ruled in its Order on the Petition that a carrier cannot charge for services it does not provide. (Tr. 148). Intrado then illogically claims that the Commission ruled that AT&T may not charge for services that it does provide. (Tr. 13). Specifically, Mr. Hicks stated in Intrado's opening that it seeks a "clear statement" that, when Intrado is the E911 provider, AT&T Florida is prohibited from continuing "to assess tariff charges to public safety for ANI selective routing and ALI services." (*Id.*). Mr. Hicks also stated Intrado's belief that the Commission

[14] If a PSAP believes it should not be charged these services, then it certainly has the option of filing a complaint with the Commission. To AT&T Florida's knowledge, this has never happened.

already ruled in Intrado's favor on this point in its Order on Intrado's Petition For Declaratory Statement. (Tr. 13). In reality, the Commission ruled exactly the opposite.[15]

Specifically, Intrado requested in its Petition for Declaratory Statement that, when it is the E911 service provider to a PSAP, the ILEC cannot charge the PSAP anything. (Order, p. 3). AT&T Florida responded, as noted in the Order, by stating that, of course, if the ILEC does not provide any service to the PSAP, then they cannot assess a charge. (Order, p. 7). However, AT&T Florida also noted a number of instances in which it would continue to provide services to the PSAP even though Intrado became the 911 service provider. (*Id.*). AT&T Florida specifically included in this discussion the provision of the selective router function in a split wire center situation. Contrary to Intrado's assertion, the Commission did not rule that AT&T Florida may not charge PSAPs under these circumstances. To the contrary, the Commission denied Intrado's request for declaratory judgment for four separate reasons, and noted that any one of the four of these deficiencies would be sufficient to require denial. (Order, p. 13)[16]. Moreover, in the Order the Commission expressly stated that it "declined to rely on Intrado's statements of facts in this case". (Order, p. 14).

Intrado's attempt to misrepresent the Commission's Order should be flatly rejected. The reality is that when AT&T Florida provides a selective routing function in the circumstances described above, it is providing a service to the PSAP. It should, of course, be entitled to charge for the service it renders. There is absolutely nothing in the declaratory statement that can be read as contradicting this simple, straight-forward conclusion.

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[15] Order Denying Amended Petition for Declaratory Statement; Order No. PSC-08-0374-DS-TP; Docket No. 080089-TP, issued June 4, 2008 ("Order"). AT&T Florida is, of course, aware that it need not remind the Commission of the content of its own Order. AT&T Florida addresses this issue only because Intrado's argument is based upon a fundamental mischaracterization of the Order.

[16] These reasons include (1) "vagueness/failure to comply with legal requirements", (2) "continued provision of compensable 911 service by ILECs", (3) "issues may be addressed in pending arbitration proceedings", and (4) "the Petition improperly seeks to determine the conduct of third parties". (Order, pp 13-15).

Finally, within the context of issue 3(a) there is a dispute concerning the language of Appendix 1TR. Specifically, Section 4.2 of this appendix includes provisions for non-911 trunking requirements. The dispute relates to interconnection trunking requirements for public switched telephone network ("PSTN") traffic. AT&T Florida's language would define "the various categories of tandem switches that may require carriers to establish trunking for call completion to the end offices grouped behind those tandems". (Tr. 397). The gist of this language is that traffic *shall* be routed according to the Local Exchange Routing Guide ("LERG"). Intrado proposes to substitute "may" for "shall" in the language in which AT&T Florida would require a carrier to establish trunking to the correct tandem. As Mr. Neinast testified, "without a trunk group at these tandems, there is the possibility there could be misrouted traffic or blocked calls." (Tr. 398). To avoid this possibility, the Commission should adopt the language proposed by AT&T Florida.

> **Issue 3(b): What trunking and traffic routing arrangements should be used for the exchange of traffic when AT&T is the designated 911/E911 service provider?**
>
> **AT&T Florida's Position: When AT&T Florida is the designated 911/E911 Service Provider, AT&T Florida expects to offer reciprocal trunk group arrangements necessary to provide reliable 911/E911 service to Intrado's end user local exchange customers (if there are any).

The dispute regarding Appendix 911 § 4.2.1 relates to Intrado's obligation to establish trunks to each AT&T Florida selective router that serves an area where Intrado provides telephone exchange service to end users and where AT&T Florida is the 911 service provider. Intrado's latest proposed language for this Section is that it merely needs to "arrange to deliver 911 traffic". However, as Mr. Neinast explained, facilities and trunks are different. (Tr. 458). AT&T Florida's language does not require that Intrado provide the facilities to each AT&T selective router, only that it needs to provide interconnection trunks to the appropriate selective routers. These trunk group arrangements are reciprocal to what AT&T Florida will provide for AT&T Florida's end users to

access Intrado's PSAP customers. Accordingly, AT&T's language in Appendix 911 § 4.2.1 should be adopted.

For the most part, the discussion contained above in regard to issue 3(a) does not apply to issue 3(b). However, the specific dispute regarding the language of section 4.2 of Appendix ITR applies equally to both 3(a) and 3(b). Therefore, AT&T Florida requests that the Commission resolve this issue by adopting the language proposed by AT&T Florida for the reasons discussed above in the context of the immediately preceding sub-issue.

Issue 4(a): What terms and conditions should govern points of interconnection (POIs) when: (a) Intrado Comm is the designated 911/E911 service provider;

Issue 4(b): What terms and conditions should govern points of interconnection (POIs) when: (b) AT&T Florida is the designated 911/E911 service provider;

**AT&T Florida's Position: Federal law requires the POI to be established on the incumbent LEC's network. The POI should be established within AT&T Florida's network at the most economical and efficient location to provide service to a PSAP, which is at AT&T Florida's Selective Router.

Issue 4(c): What terms and conditions should govern points of interconnection (POIs) when: (c) a fiber mid-span meet is used;

**AT&T Florida's Position: The Parties should interconnect at AT&T Florida's selective router location, not at some other point to be dictated by Intrado. (*See also* Issue 4(b).) The language disputed in NIM does not exist if the 9-state template is used.

Although this issue involves a number of situations, and the parties have at least some dispute regarding each of them, the central issue relates to interconnection when Intrado is the designated 911 service provider. AT&T Florida advocates that in this circumstance, Intrado should interconnect on AT&T Florida's network at AT&T Florida's Selective Router. Intrado contends that in this circumstance, AT&T Florida should be required to interconnect at two different points on Intrado's network.

As Mr. Neinast explains, the "point of interconnection" ("POI") issue arises when two telecommunications companies interconnect their networks together. In this situation, "the facilities are physically connected, linking the two networks to one another. The point at which this connecting or linking takes place is known as the point of interconnection or POI". (Tr. 401). The clear language of the Telecommunications Act establishes that the POI must be on AT&T Florida's network. Section 251(c)(2)(B) specifically provides that interconnection shall take place "at any technically feasible place *within the carrier's network*". (Emphasis added). On its face, this unmistakably clear provision of the Act prohibits Intrado's proposal that the Commission require AT&T Florida to connect on Intrado's network.

Mr. Hicks stated in his pre-filed testimony that AT&T Florida has refused to provide Intrado interconnection "that is at least equal in quality to that provided to itself, an affiliate or other carrier". (Tr. 79-80). Although Mr. Hicks' testimony on this point is unclear, Intrado seems to take the position that the general requirement as to the quality of interconnection set forth in Section 251(c)(2)(C) allows Intrado to insist that AT&T Florida interconnect on Intrado's network. In apparent support of this theory, Mr. Hicks states that "Intrado Comm understands that AT&T either uses mid-span meet points with adjacent ILECs for the transport of 911/E911 traffic to the appropriate PSAP or transports traffic to the selective router of the 911/E911 provider. Intrado Comm seeks to mirror the type of interconnection arrangements that AT&T has used historically with other ILECs." (Tr. 85).

There are numerous problems with Intrado's theory. First, Intrado asserts that the requirement of comparable *quality* (in subsection (C)) means that it is entitled to comparable *location*, an extremely tenuous position given the fact that immediately preceding this subsection is subsection (B), which dictates the location of the POI, *i.e.*, on the ILEC's network. Thus, Intrado's theory is apparently that subsection (C) creates an implied right to have interconnection on its network, despite the language in subsection (B) that expressly states that interconnection must be on the carrier's network. In other words, Intrado interprets the Act to mean, by implication, precisely the opposite of what it expressly states.

Second, Intrado claims that ILECs such as AT&T Florida interconnect with adjacent ILECs at the boundary between the two, and that, therefore, Intrado is entitled to the same treatment. The simple answer to this is that ILEC to ILEC interconnection is not subject to Section 251. Thus, the clear requirement of subsection (B) that the interconnection be on the carriers' network (which obviously applies in this instance to Intrado) does not apply to non-251 interconnection between ILECs.

Finally, Intrado's claim that its entitlement to comparable quality entitles it to interconnect outside AT&T Florida's network is belied by the fact that Intrado is actually proposing an interconnection arrangement that is vastly different from anything that AT&T has with any ILEC, either in Florida or anywhere else. As Mr. Neinast testified (and as Mr. Hicks acknowledged in his testimony) ILEC to ILEC interconnection typically occurs at the boundary of adjacent ILECs. (Tr. 431). As will be explained below, Intrado's proposal would not involve interconnection between carriers serving adjacent territories, but rather would require AT&T Florida to transport traffic for hundreds of miles to some yet-to-be determined locations. Thus, it is not at all comparable to the interconnection that AT&T Florida offers to other ILECs.

Finally, Mr. Neinast addressed the issue of why Intrado should be required to interconnect, not just on AT&T Florida's network, but at AT&T Florida's selective router. First, as Mr. Neinast noted, interconnection at AT&T's selective router is consistent with the way that other carriers are interconnected to AT&T for the purposes of routing 911 calls. (Tr. 402). Moreover, Mr. Neinast noted that if Intrado does not interconnect at AT&T's selective router, then, under the language Intrado proposes, all other carriers would be required to reroute their facilities from the selective router at which they currently interconnect to the location that Intrado chooses (Tr. 404). This would, in turn, "increase carriers' costs and risk service interruptions for 911 traffic" (Tr. 403). Again, interconnections for the provision of 911 service are currently at AT&T's selective router. There is simply no reason to allow Intrado to select a different location on AT&T's network and force all other carriers to go to that location.

It is clear from Intrado's testimony that it focuses less on precisely where it would interconnect on AT&T Florida's network, and more on its argument that the interconnection should not be on AT&T Florida's network at all. As set forth previously, Intrado's position in this regard enjoys no legal support whatsoever. Moreover, Intrado's proposal is patently unworkable and would impose massive costs not just on AT&T Florida, but on all other ILECs and CLECs in the state.

During the hearing, Mr. Hicks stated that when Intrado is the designated 911 provider, then AT&T Florida should interconnect at Intrado's Selective Routers (Tr. 189). He admitted, however, that "currently Intrado doesn't have any selective routers in Florida." (Tr. 189-90). Mr. Hicks also admitted that Intrado presently can commit to placing no more than two selective routers anywhere in the state of Florida, and that it has no idea as to the future location of these selective routers. (Tr. 190). Nevertheless, Intrado would expect AT&T Florida to interconnect at both selective router locations, wherever these locations may ultimately be. (*Id.*).

Mr. Hicks then admitted, in response to a hypothetical question, that if Intrado obtained the business of a PSAP in Pensacola, but decided to place its selective routers in Jacksonville and Miami then, under its proposal, AT&T Florida would be required to transport the calls of its local Pensacola end user customers all the way to Jacksonville *and* all the way to Miami, an air mile distance of more than 500 miles. (Tr. 190-91). The absurdity of this situation is obvious. If AT&T Florida's customer is in Pensacola (*i.e.*, the end user), and Intrado's customer is in Pensacola (*i.e.*, the PSAP), one would think that Intrado would have no objection to having a local presence in the area where the service is being provided, just as AT&T does. To the contrary, under the Intrado proposal, Intrado would be free to place its selective router hundreds of miles away, and to force AT&T Florida to transport its customers' calls to remote locations, perhaps at the opposite end of the state. As with all of Intrado's proposals, Intrado also believes that these transport costs should be borne entirely by AT&T Florida. (Tr. 197). Intrado has volunteered to contribute nothing.

Even worse, as Mr. Hicks admitted on cross examination, Intrado's proposal would apply to every CLEC that competes in the state of Florida to provide local service. (Tr. 192). Mr. Hicks also admitted that, under Intrado's proposal, this same requirement would apply not just to AT&T Florida, but to every other ILEC in the state of Florida. (Tr. 195-96). Mr. Hicks was also very clear that, under Intrado's proposal, all of these CLECs and ILECs would have to pay the costs (whatever they might be) to transport their customers' 911 calls to Intrado's selective routers (wherever Intrado may choose to place them). (Tr. 197-98).

Given the above, Intrado's proposal is not only patently unsupportable, it is outrageous. This entire arbitration is riddled with instances in which Intrado is attempting to shift its costs to AT&T Florida. This issue provides one of the most extreme examples. Intrado, of course, has the option of reducing its costs by simply placing its equipment in the areas that it plans to serve in a location that is relatively close to AT&T's selective routers. Rather than accepting this simple and

reasonable approach, which would require only that Intrado have a presence in the areas it plans to serve, Intrado has made a proposal that would impose costs of a tremendous magnitude on AT&T Florida, as well as every other ILEC and every other CLEC in the state of Florida. Clearly, Intrado's proposal should be rejected.

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Intrado's position seems to be that, when AT&T Florida provides 911 services, Intrado is willing to interconnect on AT&T's network. To the extent that this is the case, the parties would appear to be in agreement. However, in his pre-filed testimony, Mr. Hicks also stated that in areas in which AT&T is the designated 911 service provider "Intrado Comm seeks to establish a POI on AT&T's network for determination of local exchange traffic and emergency calls originated by Intrado Comm's end users and destined for AT&T's network. This can be achieved by establishing a POI at AT&T's selective router/911 tandem *or utilizing a mid-span meet point.*" (Tr. 88) (emphasis added). Thus, Intrado appears to claim that it has the option of either interconnecting on AT&T Florida's network at AT&T Florida's selective router (an approach with which AT&T obviously agrees), *or* requiring a mid-span meet point. The precise location of the mid-span meet point is not described in Intrado's testimony, as Mr. Hicks only states vaguely that it would be subject to negotiation. (*Id.*). Nevertheless, Mr. Hicks states that each carrier should be required to go to the mid-span meet point, even if AT&T Florida "is required to build out facilities to reach that point". (Tr. 89-90).

Putting this position into real world terms, if Intrado did choose to place its selective router five or six hundred miles away from the location of the PSAP that it seeks to serve (as in the Pensacola / Miami hypothetical discussed above), it could presumably require AT&T Florida to build facilities to a meet point somewhere between the service area and its selective router. As demonstrated above, this could be a distance of several hundred miles. Thus, Intrado's position on Issues 4(b) and 4(c) suffers from all the unfairness, inequity, and inappropriate cost transfers that

would arise if AT&T Florida is required to interconnect on Intrado's network (Issue 4(a)). Intrado's proposal on this sub-issue also fails because it, too, violates the requirements of Section 251 (c)(2)(B) that interconnection occur on the carrier's (*i.e.*, AT&T Florida's) network. Thus, Intrado's assertion that it can avoid the requirement to interconnect on the ILEC's network, and demand interconnection at a mid-span meet point, is simply wrong.

> **Issue 5(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?**
>
> **Issue 5(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?**
>
> **AT&T Florida's Position: No. The parties should negotiate private agreements for PSAP-to-PSAP call transfer, with the participation of PSAPs and other relevant government agencies. This approach will ensure that PSAPs can obtain what they want, and that AT&T Florida will be compensated for the costs it incurs to provide these arrangements.

Intrado's position on inter-selective routing for PSAP to PSAP call transfers is one of the most egregious examples of its efforts to shift its costs of doing business (or, in this case, the cost for developing a line of business) to AT&T Florida. This issue involves the use of inter-selective routing to provide the ability for a PSAP to transfer a call directly to another PSAP.

Mr. Neinast testified as to the way these arrangements are provided at present. Specifically, he testified that not all PSAPs want these arrangements, and that PSAPs who do want these arrangements typically order them on a customized basis that varies from one PSAP to the next. (Tr. 408-09) Moreover, when a PSAP wishes to have this functionality, it orders it directly from the provider (historically, AT&T Florida). PSAPs order precisely what they want, and they pay AT&T Florida for what they order. On this point, Mr. Neinast testified as follows:

> Under the established practice today, when AT&T Florida incurs the costs to implement the capability for Selective Router-to-Selective Router call transfers, the requesting PSAP compensates AT&T Florida for those costs. Under Intrado's proposal, however, AT&T Florida would be required to incur all the costs to

> implement this capability, regardless of whether any PSAP requested it, yet neither the PSAP nor Intrado would compensate AT&T Florida for any of its costs. In effect, Intrado is trying to force AT&T Florida to spend the money to implement new capabilities so that Intrado can then attract PSAP customers by promising that those capabilities will be available at reduced rates.

(Tr. 410-11).

Thus, the entire purpose of Intrado's position on this issue is to shift costs to AT&T Florida that it currently does not bear.

Beyond this generally improper purpose, there are a number of other problems with Intrado's proposal. First, this issue is really not about interconnection at all, and is not proper for inclusion in an interconnection agreement. Again, the call transfer functionality is something that a PSAP orders to allow it to transfer a call to another PSAP. The PSAP has a variety of options for obtaining this functionality, and it need not even obtain this functionality from the E911 service provider. As Mr. Neinast testified,

> The engineering and implementation of [this call transfer] architecture must be designed and implemented in conjunction with a PSAP as well as any other relevant government agencies, unlike facility and trunking arrangements in a Section 251 ICA, these facilities and trunks would be deployed not to effectuate interconnection between AT&T Florida and Intrado, but rather solely to meet a specific request of the E911 customers, who are not a party to this agreement.

(Tr. 409).

Obviously, the purpose of a Section 251 Agreement is to set the terms for interconnection between a CLEC and an ILEC. It is not to dictate the services that can be sold, or the prices that can be charged, to potential customers who are not parties to the agreement. Intrado's unprecedented attempt to misuse Section 251 in this way should be rejected.[17]

[17] "Unprecedented" in this case means that no CLEC has previously made this attempt. In this proceeding, Intrado has made it twice, once in this issue and once in the context of Issue 3.

In Mr. Hicks' testimony on this issue, he ignores the fundamental nature of call transfers and the way they have been provided in the past, and instead, devotes most of his testimony to the need to develop what he euphemistically refers to as "interoperability". He also speaks glowingly of Intrado's approach to PSAP to PSAP transfers. To the contrary, Intrado's proposal would, if anything, degrade current PSAP to PSAP call transfer capability.

AT&T Florida has requested the inclusion of the following language from Section 1.4 into the interconnection agreement:

> If a 911/E911 Customer requests either Party to establish a PSAP to PSAP transfer arrangement, the Parties will negotiate such a separate agreement consistent with the 911/E911 Customer's request for such an arrangement. The 911/E911 Customer will be a party to this separate agreement.

Thus, the provision advocated by AT&T Florida states specifically that requests for call transfer capability would be initiated by the PSAP, and an agreement would be entered into to ensure that the PSAP gets precisely what it wishes to have. Intrado, in contrast, wants AT&T Florida to provide to it (at no charge) the capability to provide PSAPs a sort of one-size-fits-all call transfer product. Thus, under Intrado's proposal, PSAPs would have little or no ability to order precisely what they want. Instead, they would simply be stuck with whatever Intrado chooses to offer them.

Intrado's proposal would not only limit what PSAPs could order, it would also ensure that Intrado would be able to make windfall profits from its one-size-fits-all call transfer product. Moreover, Intrado would gain this capability at AT&T Florida's expense. As Mr. Neinast testified, implementing the call transfer capability that Intrado seeks "would require AT&T Florida to incur costs for facilities, trunks, database storage, extensive translations and testing." (Tr. 409).[18] As Mr.

[18] Moreover, as Mr. Neinast also testified, not all PSAPs want call transfer capability. Thus, Intrado's proposal would create even more unnecessary costs for AT&T Florida in that AT&T Florida would have to create call transfer capability even in situations in which the particular PSAP does not wish to have, and will not use, this capability. (Tr. 409).

Neinast also testified, Intrado has not provided a mechanism whereby AT&T Florida could recover these costs, and Intrado has certainly not offered to pay any of these costs in order to obtain this capability. (*Id.*). Instead, Intrado's proposal is that AT&T Florida would incur costs to create a network capability, AT&T Florida would provide the capability to Intrado free of charge as part of the interconnection agreement, and Intrado would be free to sell the resulting call transfer product to PSAPs. Intrado's sale of this call transfer product to PSAPs would represent pure profit to Intrado.[19]

Again, PSAP to PSAP call transfer arrangements can be very useful, and they should be available to any PSAP that wants them. Moreover, they should be available to PSAPs on a customized basis so that these arrangements can meet the needs of the particular PSAPs. Finally, the PSAPs should pay, as they always have in the past, when they order these arrangements. The payment should go to AT&T Florida, or to any other provider that undertakes the labor, and sustains the costs, necessary to create this capability.

The parties also have a dispute in Appendix 911 § 7.4.1.5 with respect to notification of dialing plan changes. AT&T Florida objects to a requirement that it notify Intrado of each and every dialing plan change, which is what Intrado's proposed language would require. Such notification is unduly burdensome and unnecessary, as AT&T Florida experiences numerous dialing plan changes on a regular basis that have no impact whatsoever on inter-selective router trunking for 911.

> **Issue 6(a): Should requirements be included in the ICA on a reciprocal basis for: (1) trunking forecasting; (2) ordering; and (3) service grading:**
>
> **AT&T Florida's Position: (1) Intrado should provide an initial trunk forecast to ensure adequate trunking to accommodate its demand when it enters the local exchange service market; (2) AT&T Florida should not be obligated to use an undefined and non-standard ordering system; (3) Resolved.

[19] In his testimony, Mr. Hicks claims vaguely that Intrado would be willing to underwrite its own costs, and to absorb these costs as overhead. Mr. Hicks, however, gives no indication as to what Intrado's cost in this arrangement would be. (Tr. 121)

Issue 6(b): If not, what are the appropriate requirements?

**AT&T Florida's Position: (b) See part (a).

This issue involves disputes of two separate contractual provisions in Appendix ITR[20]: one that relates to trunk forecasting requirements, and one that relates to Intrado's proposed language for trunk orders placed by AT&T Florida.

As to the first provision, the parties generally agree that trunk forecasting requirements should be fair and reciprocal, and that each party should provide the other with necessary information. This dispute specifically relates to initial trunk forecasts. In Section 6.1, Appendix ITR, AT&T has requested that Intrado provide it with initial forecasts that are necessary to ensure that AT&T Florida has available enough trunk capacity to meet the demands of Intrado's network. (Tr. 417). That is, AT&T Florida will use this forecast to make necessary changes to its network to accommodate Intrado's traffic. In this limited instance, AT&T Florida does not believe that there is any need for a reciprocal requirement because an initial forecast from AT&T would be meaningless. As Mr. Neinast testified, "AT&T Florida's network is already sized to handle the traffic loads that are presented on a minute-by-minute basis every day." (Tr. 412). AT&T Florida requires Intrado's initial forecast to determine how much *additional* traffic Intrado will be adding to AT&T's network, and to plan accordingly. Intrado, on the other hand, is developing a new network that will be initially sized. That is, Intrado does not need an initial AT&T trunk forecast to determine whether a pre-existing network is adequate. Thus, while AT&T generally supports reciprocal requirements, in instances such as this, where the needs of the parties are different, there should be a deviation from the general practice of reciprocal forecast requirements.

[20] Appendix ITR deals with non-911 interconnection trunks.

As to the dispute regarding AT&T Florida's trunk orders, Intrado has proposed a particular process whereby AT&T Florida would order trunks from Intrado according to procedures that Intrado will post on its website at some future time. Under this approach, AT&T Florida would be bound to accept whatever future rates and procedures Intrado chooses to post. (Tr. 413). AT&T Florida submits that the better, more equitable approach is to make both the ordering procedures and service prices reciprocal.

Issue 7(a): Should the ICA include terms and conditions to address separate implementation activities for interconnection arrangements after the execution of the interconnection agreement? If so, what terms and conditions should be included?

**AT&T Florida's Position: Intrado should be required to notify AT&T when it intends to interconnect to an AT&T Selective Router. Also, 120-days notice should be required to add or remove a network switch. The dispute regarding Appendix NIM does not exist if the 9-state template is used.

This issue involves disputed language in three sections of Appendix 911 NIM, §§ 2.4, 5.1 and 5.3.

In Appendix 911 NIM § 2.4, AT&T's proposed language provides that each party will notify the other of an "intent" to the change the parties' physical architecture plan for 911 services, while Intrado's language states that a party must simply notify the other party of its "request" for a change. (*See* Exhibit 44, Appendix 911 NIM). A request, however, does not signify an actual intent to modify the plan. AT&T Florida's language provides for the necessary notification of an actual intent to change the parties' physical architecture for 911 services and should be adopted.

In Appendix 911 NIM § 5.1, AT&T Florida has proposed language for instances in which Intrado seeks to establish new facilities and trunking arrangements on one of AT&T Florida's selective routers. Specifically, AT&T Florida submits that the following procedure should be followed:

> 5.1 For each interconnection within an AT&T-(STATE) Selective Router area, CLEC shall provide written notice to AT&T-(STATE) of the need to establish Interconnection with each Selective Router. CLEC shall provide all applicable network information on forms acceptable to AT&T-(STATE) (as set forth in AT&T's CLEC Handbook, published on the CLEC website).

It is not clear why Intrado opposes this reasonable requirement. However, based on the testimony of Mr. Hicks, it may be that Intrado is confused as to what AT&T is proposing. Specifically, Mr. Hicks testified that "AT&T's proposed language contemplates that the parties will amend the interconnection agreement to set forth the specific interconnection arrangements to be utilized by the parties". (Tr. 98). A review of the language quoted above, however, makes it clear that this language does not require an amendment to the Interconnection Agreement. Instead, AT&T Florida simply proposes that Intrado would give notice that it has a need for interconnection to a particular selective router, and that it utilize the provided forms to supply the necessary network information. As Mr. Neinast stated in his testimony, without this language "there would be no way to establish any new interconnection arrangements for Intrado. The language AT&T proposes is standard language that it offers to all CLECs using established practices that provide for advance notification, using systems that have worked successfully for years and would be meet both Intrado's and AT&T's network needs". (Tr. 414). Accordingly, the Commission should select AT&T's proposed language for inclusion in Section 5.1.

As to Appendix 911 NIM § 5.3, which concerns the addition or removal of switches by either party, AT&T Florida proposes that 120-days written notice be given of these switch changes. Intrado proposes 30 days. In the testimony of its witnesses, Intrado gives no indication as to why it advocates such a short notice interval. In contrast, Mr. Neinast addressed specifically the reasons that a 30-day interval is too short, and that 120 days is needed, *i.e.*, the magnitude of changing a

switching system is such that 120 days is needed for the necessary planning activity. (Tr. 415). Interestingly, in the context of Issue 5 and inter-selective router trunking, Intrado argues that AT&T Florida should give Intrado notice of dialing plan changes. (Tr. 95). Yet in the context of Issue 7(a), Intrado objects to creating provisions for reciprocal notice requirements for switch removal/additions with sufficient lead time to allow the coordination of such major network changes and that will ensure there are no service outages as a result of these changes. (Tr. 437). It makes no sense for Intrado to demand advance notice in the context of selective routing dialing plans, while simultaneously advocating an unworkably short notice period for making changes to network switches, which is a substantial undertaking. (Tr. 415). The Commission should adopt the 120-day notice interval proposed by AT&T Florida for addition or removal of switches.

This issue also encompasses similar disputed language in Appendix NIM §§ 2.1, 4.1, 4.2 and 4.3 with respect to non-911 interconnection. If the Commission rules that the 13-state Agreement is to be used rather than the 9-state Agreement, the Commission should adopt AT&T Florida's proposed language in Appendix NIM §§ 2.1, 4.1, 4.2 and 4.3 for the same reasons set forth above for 911 interconnection.

Issue 8(a): What terms and conditions should be included in the ICA to address access to 911/E911 database information when AT&T is the Designated E911 Service Provider?

**AT&T Florida's Position: AT&T Florida opposes Intrado's proposed use of the vague and undefined term "ALI interoperability" in 911 Appendix, § 3.4.3.

The Commission should reject Intrado's proposed imposition of an "ALI interoperability" requirement on AT&T Florida, including a duty to collaboratively maintain steering tables.

In Appendix 911, § 3.4.3 Intrado proposes to obligate AT&T to provide "ALI interoperability". However, as Mr. Neinast testified, this term is not "defined anywhere in the ICA or on the NENA website, which is the default definition standard both parties have agreed to use when settling definition issues." (Tr. 438). Separately, the two components of the term have definitions. ALI stands for Automatic Location Identification, which PSAPs use to identify an end user's street address. (Tr. 439). According to NENA, interoperability is "the capability for disparate systems to work together". (*Id.*). The meaning that Intrado intends these two terms to have when combined into "ALI interoperability", however, is unknown. Mr. Neinast testified that the danger in adopting this undefined term is that it may reflect an effort by Intrado to impose a new, non-standard protocol (which may be unreliable) and to obligate AT&T Florida to follow this protocol. (*Id.*). The Commission should not sustain Intrado's effort to force AT&T to provide something that is undefined in the Agreement, and the meaning of which is generally unknown.

Issue 9: To the extent not addressed in another issue, which terms and conditions should be reciprocal?

** AT&T Florida's Position: In 911 § 9, AT&T's language provides that the 911 appendix applies to the provision of 911 service pursuant to Section 251.

The Parties dispute certain language in Appendix 911, §§ 9.1, 10.1, and Appendix Out-of-Exchange Traffic ("OET") § 1.1. The parties' disputes in other provisions of Appendix 911, § 9 are resolved.

Appendix 911, § 9.1: At the time AT&T Florida submitted its pre-filed direct testimony, the parties had no disagreement with the language in Appendix 911, § 9.1. (*See* Exhibit 43, Appendix 911). In subsequent negotiations, Intrado expressed its objection to inclusion of this language, however Intrado did not offer either direct or rebuttal testimony in support of its position. Accordingly, AT&T Florida's language, to which Intrado previously agreed, should be adopted.

Appendix 911, § 10.1: Appendix 911, § 10.1 addresses compensation for access to 911 services. The parties agree that rates for such access pursuant to Section 251 of the Act are set forth in Appendix Pricing. (Tr. at 277). However, Intrado objects to AT&T Florida's language providing that access tariff pricing (rather than interconnection agreement pricing) might be appropriate in certain situations. (*Id.*).

As Ms. Pellerin testified regarding Issues 1(c) and 1(d), the parties have not proposed rates for 911 database functions, so there would be no relevant prices in Appendix Pricing. Ms. Pellerin also testified that prices for interconnection trunking are set forth in the pricing attachment to 9-state Attachment 3. (Tr. 330). Furthermore, she noted that Appendix Pricing is a 13-state document that would not apply in Florida (since pricing is state specific). (Tr. 277).

As Ms. Pellerin explained in her testimony, an example of when Access Tariff Pricing would be appropriate for the provision of 911 Services, would be a situation where Intrado sought to lease facilities from AT&T Florida to provide 911 service to a PSAP. (*Id.*). Ms. Pellerin further explained that where AT&T Florida is not obligated to offer such facilities pursuant to the interconnection agreement (*e.g.*, dedicated transport on a route that is not impaired and therefore not offered in the interconnection agreement), Intrado would order and pay for such facilities pursuant

to AT&T Florida's access tariff. (Tr. 277-78). Further, to the extent Intrado elected to utilize AT&T Florida's facilities to connect to the POI, such facilities would also be ordered and priced pursuant to AT&T Florida's special access tariff. (Tr. 278). Thus, AT&T Florida's reference to the applicable access tariff is appropriate and AT&T Florida's proposed language should be adopted.

OET § 1.1[21]: Intrado proposes language to exclude the exchange of 911 calls and inter-selective router calls from Appendix OET § 1.1. However, as Ms. Pellerin explained, this language is unnecessary because the definition of out-of-exchange traffic in OET Section 1.4 already excludes 911 traffic. (Tr. at 280). Intrado's proposed language for OET § 1.1 is unnecessary and duplicative and should be rejected.

Issue 10: What 911/E911-related terms should be included in the ICA and how should those terms be defined?

** AT&T Florida's Position: Intrado's proposed language regarding the definition of "911 Trunk" or "E911 Trunk" could inappropriately require AT&T Florida to provide direct trunking from its end offices to Intrado's selective router, even if that required AT&T Florida to implement extensive network modifications to support Class Marking. (*See also* Issue 3a.)

The dispute between the Parties involves disputed language in the Appendix 911, § 2.3. The language in Appendix 911, § 2.3 concerns a definition for 911 trunk, which AT&T changed to meet the needs of Intrado, since it is only using Selective Routers and not End Office switches. (Tr. 420). As Mr. Neinast indicated, AT&T Florida has proposed the generic term "switch" in place of the current language. *Id.* The Commission should accept AT&T Florida's proposed language for Appendix 911, § 2.3 as it is appropriate language to meet the needs of Intrado, which will only be using Selective Routers and not End Office switches.

[21] This language dispute (OET Section 1.1) is not present in the 9-state template and need not be addressed by the Commission unless it requires use of the 13-state template.

Issue 13(a): What subset of traffic, if any, should be eligible for intercarrier compensation when exchanged between the Parties?

** AT&T Florida's Position: This issue does not exist if the 9-state template is used. AT&T defines the terms "Section 251(b)(5) Traffic," "ISP-Bound Traffic" and "Switched Access Traffic" as they appear in the 13-state template. AT&T's definitions articulate the conditions under which traffic is subject to intercarrier compensation while Intrado's proposed language is vague.

This issue centers around the Parties disputing certain proposed language in the 13-state template GTC §§ 1.1.84, 1.1.122; IC §§ 1.2, 4.1, 5.1, 16.1; and ITR §§ 2.14, 12.1. Specifically, the Parties disagree as to the proper definitions for "Section 251(b)(5) Traffic," "ISP-Bound Traffic" and "Switched Access Traffic." The Parties also disagree regarding the application of these terms to other provisions in the Interconnection Agreement.

Section 251(b)(5) Traffic: As Ms. Pellerin explained, AT&T Florida's proposed definition for Section 251(b)(5) traffic,[22] set forth below, accurately reflects the specific criteria applied in determining what traffic is subject to reciprocal compensation. (Tr. 284).

> **Section 251(b)(5) Traffic" shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are:**
>
> **a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or**
>
> **b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.** (Tr. at 284-85).

Conversely, Intrado's proposal states that "Section 251(b)(5) Traffic" be defined as "by Applicable Law, including the rules, regulations and orders of the FCC and courts of competent jurisdiction." (Tr. 285). Intrado's proposed definition is unnecessarily vague and is open to

[22] AT&T Florida has proposed its definition of Section 251(b)(5) Traffic be included in both the GTCs (Section 1.1.124) and Appendix IC (Section 4.1). (Tr. at 284). Intrado has not objected to this definition appearing twice; rather Intrado has proposed the same competing language in both instances. (*Id.*)

differing interpretations. Moreover, under cross-examination, Ms. Clugy admitted that the use of "in accordance with applicable law" rather than a specific standard as proposed by AT&T Florida would probably lead to more disputes as to the meaning of the phrase "applicable law". (Tr. 52-53). Ms. Clugy also conceded that Intrado has not proposed more specific language. (*Id.*).

AT&T Florida's definition is consistent with federal law and properly recognizes that the physical location of the originating and terminating end users is determinative as to whether a call is subject to Section 251(b)(5). *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic*, CC Docket Nos. 96-98 & 99-68, *Order on Remand and Report and Order*, 16 F.C.C. Rcd. 9151, FCC 01-131 (rel. April 27, 2001) ("*ISP Remand Order*"), *remanded but not vacated, WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). Intrado is incorrect in its claim that AT&T Florida's definition is inconsistent with the law simply because the FCC abandoned its use of the term "local" in identifying traffic subject to Section 251(b)(5). (Tr. 32-33). In the ISP Remand Order, while the FCC dispensed with using "local" as the term for traffic subject to reciprocal compensation under Section 251(b)(5), the FCC reaffirmed that Section 251(b)(5) reciprocal compensation only applies to traffic that originates and terminates in the same local exchange. In addition, FCC Rule 701(b) states that Section 251(b)(5) reciprocal compensation is inapplicable to "traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." 47 C.F.R. § 51.701(b)(1).

Moreover, AT&T Florida's definition is consistent with the language previously adopted by the Public Utilities Commission of Ohio in *In the Matter Of TelCove Operations, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of*

Interconnection with Ohio Bell Telephone Company d/b/a SBC Ohio Case No. 04-1822-TP-ARB, Arbitration Award dated January 25, 2006, Issue 37, and should be adopted here.[23]

ISP-Bound Traffic: The parties' dispute regarding the definition of ISP-Bound Traffic is reflected by the following language:

> "**ISP-Bound Traffic**" shall mean telecommunications traffic, ***defined*** in accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order")., **"ISP-Bound Traffic" shall mean telecommunications traffic exchanged between CLEC and AT&T-(STATE) in which the originating End User of one Party and the ISP served by the other Party are:**
>
> a. **both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or**
>
> b. **both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.**

As with the definition of Section 251(b)(5) Traffic, AT&T Florida has proposed additional language be included in the definition of ISP-Bound Traffic to clearly articulate what is intended.[24] (Tr. 286). Accordingly, AT&T Florida's language should be adopted.

[23] Since this language is 13-state language never presented for arbitration in Florida, there is no prior state-specific ruling to reference. It is therefore appropriate to consider a 13-state commission's decision (in this case, Ohio) that adopted this language. AT&T Florida notes that while Intrado is seeking the 13-state language that was negotiated for Ohio, Intrado has thus far been unwilling to accept language ordered adopted by the Public Utilities Commission of Ohio.

[24] AT&T Florida has proposed its definition of ISP-Bound Traffic be included in both the GTCs (Section 1.1.84) and Appendix IC (Section 5.1). (Tr. 286). Intrado has not objected to this definition appearing twice; rather Intrado has proposed the same competing language in both instances. (*Id.*).

Switched Access Traffic: As explained by Ms. Pellerin, AT&T Florida has proposed a comprehensive definition of Switched Access Traffic, while Intrado simply wants a vague reference to Applicable Law.[25] (Tr. 287).

> For purposes of this Agreement only, Switched Access Traffic shall ***be defined consistent with Applicable Law.*** **mean all traffic that originates from an End User physically located in one local exchange and delivered for termination to an End User physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in AT&T-(STATE)'s local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the End User's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology. Notwithstanding anything to the contrary in this Agreement.** ***To the extent required by Applicable Law,*** all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks. (Tr. at 287-88).

Also, as indicated above, during cross-examination, Ms. Clugy admitted that the use of "in accordance with applicable law" rather than a specific standard would probably lead to disputes as to the meaning of the phrase "applicable law." (Tr. 52-53).

Moreover, the language proposed by AT&T Florida was previously adopted by the Public Utilities Commission of Ohio in the *TelCove Arbitration* case referenced above. *TelCove Arbitration,* SBC Issue 46 at pp. 16-18. As with other 13-state language in dispute, which was intended for 13-state application, the Commission has not had occasion to consider this language. In absence of specific Florida precedent and because there is no further direction from the FCC

[25] AT&T Florida has proposed its definition of Switched Access Traffic be included in both Appendix IC (Section 16.1) and Appendix ITR (Section 12.1). (Tr. 287). Intrado has not objected to this definition appearing twice; rather Intrado has proposed the same competing language in both instances. (*Id.*).

regarding this type of traffic, the Commission should follow the lead of the Ohio commission, which has experience with the 13-state language, and adopt AT&T Florida's proposed language.

Other Disputed Language Encompassed by Issue 13(a)

The parties also have a language dispute in IC § 1.2, IC § 3.5, IC § 16.1 (subsections i and ii), and ITR § 2.14.[26] (Tr. 288, 343). This language relates to the type of services Intrado will be offering its end users. (Tr. 288).

As explained by Ms. Pellerin, AT&T Florida's language in IC § 1.2 clarifies that Appendix IC applies to Intrado's "wireline local telephone exchange (dialtone) service." (*Id.*). Intrado has requested a wireline Interconnection Agreement, and Intrado should not be delivering wireless traffic to AT&T Florida over local interconnection trunks pursuant to this Agreement. As further explained by Ms. Pellerin, AT&T Florida offers a different Interconnection Agreement to wireless carriers that accommodates the differing and unique requirements of wireless services[27] and to the extent Intrado intends to deliver wireless 911 traffic to AT&T Florida, the parties have agreed that Appendix IC does not apply to 911 traffic. (Tr. 289, 343-44). Thus, the language in dispute is irrelevant as the parties have agreed that Appendix IC does not apply to 911 traffic.

Similarly, as noted by Ms. Pellerin, in IC § 16.1 (subsections i and ii) and ITR § 2.14, Intrado's traffic delivered over the local interconnection trunks should be dial tone (*i.e.,* wireline) traffic originated by its end users. (Tr. 289). Accordingly, AT&T Florida's language is reasonable for the type of services Intrado would offer its end users and should be adopted.

In sum, AT&T Florida's proposed language for the definitions of "Section 251(b)(5) Traffic," "ISP-Bound Traffic" and "Switched Access Traffic." is reasonable, complies with federal law and should be adopted by the Commission. Moreover, AT&T Florida's proposed language for

[26] This language dispute is not present in the 9-state template and need not be addressed by the Commission unless it requires use of the 13-state template. (Tr. 288).
[27] *See also* Exhibit 5, AT&T Florida's Response to Staff's First Set of Interrogatories, Item No. 4.

IC § 1.2, IC § 3.5, subsections i and ii of IC § 16.1, and ITR § 2.14 is also reasonable and the Commission should adopt AT&T Florida's language.

Issue 13(b): Should the Parties cooperate to eliminate misrouted access traffic?

** AT&T Florida's Position: This issue does not exist if the 9-state template is used. AT&T proposes that Intrado assist AT&T in removing Switched Access Traffic improperly routed over Local Interconnection trunks. Intrado's proposal could enable traffic washing and related access avoidance schemes, and AT&T Florida would be limited in forestalling such fraudulent behavior.

In Issue 13(b), Intrado and AT&T Florida disagree as to the proper steps that the Parties should undertake to address a misrouting situation. As indicated in the section of AT&T Florida's brief addressing Issue 13(a) (see IC § 16.1 quoted above for Issue 13(a)), the parties have agreed, with some exceptions, that Switched Access Traffic will be delivered over Feature Group access trunks. However, as explained by Ms. Pellerin, to the extent Switched Access Traffic is improperly routed to local interconnection trunks, Intrado and AT&T Florida disagree as to the proper steps required to remedy the problem when a misrouting situation arises. (Tr. 304). Specifically, the language in dispute contained in both Appendix IC (§ 16.2) and Appendix ITR (§ 12.2) is as follows:

> If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups ***inconsistent with Applicable Law***, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. **If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 16.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked**. (Tr. at 304-05).

As indicated in the language above, the Parties have agreed to work cooperatively to identify misrouted traffic with the goal of removing it from local interconnection trunks. However, as noted by Ms. Pellerin, Intrado objects to language requiring it to cooperate in eliminating the misrouted traffic. (Tr. 305).

Intrado's position is nonsensical. While Intrado has agreed to assist AT&T Florida in its efforts to identify misrouted traffic with the goal of removing it from local interconnection trunks, it does not want to assist AT&T Florida in actually eliminating the traffic. Should Intrado's position be adopted, as Ms. Pellerin testified, the end result would be that "traffic washing" and related access avoidance schemes would occur unfettered with AT&T Florida being unable to prevent such fraudulent behavior by third parties. (*Id.*). As further explained by Ms. Pellerin, AT&T Florida's proposed language provides the appropriate course of action for the parties to follow when Switched Access Traffic is improperly routed to local interconnection trunks. (*Id.*). Accordingly, the Commission should reject Intrado's position and adopt AT&T Florida's proposed language.

Issue 15: Should the ICA permit the retroactive application of charges that are not prohibited by an order or other change in law?

** AT&T Florida's Position: This issue does not exist if the 9-state template is used. AT&T proposes in IC Section 4.2.1 that retroactive treatment would apply to traffic exchanged as "local calls." Intrado objects to this language, preferring a vague reference to intervening law, which is redundant and therefore unnecessary.

AT&T Florida's proposal in IC § 4.2.1 is that retroactive treatment would apply to traffic exchanged as "local calls." As Ms. Pellerin notes, this is the appropriate classification of traffic to which a retroactive adjustment would apply. (Tr. 307). Intrado objects to this language, preferring a vague reference to intervening law. (Tr. 307-08). Intrado's added language "to which Intervening Law applies" is redundant and unnecessary. Therefore, the Commission should adopt AT&T Florida's proposal on IC § 4.2.1 for the reasons set forth above.

Issue 18(a): What term should apply to the interconnection agreement?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 18(b): When should Intrado notify AT&T that it seeks to pursue a successor ICA?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 20: What are the appropriate terms and conditions regarding billing and invoicing audits?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 22: Should Intrado Comm be permitted to assign the interconnection agreement to an affiliated entity? If so, what restrictions, if any should apply if that affiliate has an effective ICA with AT&T Florida?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 23: Should AT&T be permitted to recover its costs, on an individual case basis, for performing specific administrative activities? If so, what are the specific administrative activities?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 24: What limitation of liability and/or indemnification language should be included in the ICA?

** AT&T Florida's Position: Intrado's proposed language only limits AT&T's liability for 911 failures to those circumstances not "attributable to AT&T." Intrado's language is vague, ambiguous, and likely to cause disputes. Moreover, Intrado's tariff in Florida includes limitation of liability language that protects Intrado in similar circumstances. AT&T merely seeks the same protection.

In Issue 24, Intrado and AT&T Florida dispute what should be the extent of AT&T Florida's liability pursuant to the ICA. Specifically, the language in dispute contained in GTC § 15.7 provides as follows:

> **AT&T-(STATE)** shall not be liable to CLEC, its **customer** ***End User*** or any other Person for any Loss alleged to arise out of the provisions of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service ***unless attributable to AT&T-(STATE).*** (Tr. at 291).

As Ms. Clugy provides in her pre-filed direct testimony, Intrado wants this Commission to approve language that would hold AT&T Florida liable for 911 failures "attributable" to AT&T Florida. (Tr. 42). However, neither Intrado nor its customers should be allowed to hold AT&T Florida liable for personal injury, death or destruction of property for system and/or equipment "errors, interruptions, defects, failures or malfunctions of 911 service" that result from the normal course of doing business. In addition, Intrado's proposed language is vague, ambiguous, and likely to cause future disputes and should be rejected by the Commission.

Moreover, Intrado's position on this issue is hypocritical as Intrado's tariff includes liability language that would protect Intrado in these situations:

> The sole and exclusive remedy against the Company for interruption or failure of service resulting from errors, mistakes, omissions, interruptions, failures, delays, or defects or malfunctions of equipment or facilities shall be as follows: The Company shall repair or replace any item of its facilities or

defective part thereof at its expense. The Company shall have the option to decide whether to repair or to replace its facilities. (Exhibits 16, 17 Intrado Tariff Section 2.9.2.2).

As explained by Ms. Pellerin, AT&T Florida's position is that the aforementioned damage may well be the result of actions outside of AT&T Florida's control, but might still be considered as "attributable to AT&T." (Tr. 292). For example, as Ms. Pellerin testified, an independent contractor could inadvertently cut one or more E911 facilities. (*Id.*). In the event of a major disaster, capacity in the facilities or at the emergency answering points might be inadequate to handle the volume of calls. (*Id.*). As Ms. Pellerin further testified, in these circumstances, peoples' lives or property may be at stake. (*Id.*). Such situations are unfortunate, but Intrado should not be permitted to hold AT&T Florida responsible for any and all damage resulting from such events in that they might be considered as "attributable to AT&T."

Moreover, broad limits on liability for 911 service are appropriate, as the limits are critical and essential to allow carriers to provide 911 service. Without the protection of a broad limitation of liability, the cost and risk of providing 911 service would be prohibitive, and no carrier would reasonable be able (or willing) to provide 911 service without an exponential rate increase, and perhaps not even then because of the unlimited liability. It is hypocritical for Intrado to deny AT&T Florida the liability protection it requires when Intrado protects itself through its tariffs. Therefore, the Commission should adopt AT&T Florida's language on this issue for the reasons stated above.

Issue 25(a): Should disputed charges be subject to late payment penalties?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 25(b): Should the failure to pay charges, either disputed or undisputed, be grounds for the disconnection of services?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 25(c): Following notification of unpaid amounts, how long should Intrado Comm have to remit payment?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 25(d): Should the Parties be required to make payments using an automated clearinghouse network?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 29(a): What rounding practices should apply for reciprocal compensation usage and airline mileage?

**AT&T Florida's Position: This issue does not exist if the 9 state template is used. AT&T Florida's proposal (for use in the 13 state template) to round airline mileage to the next mile is consistent with the industry standard practice and should be adopted.

This issue involves the appropriate rounding practices to apply in two different contexts: (1) airline mileage; and (2) reciprocal compensation. This dispute exists with respect to reciprocal compensation only in the context of the 13-state template. In other words, if the Commission chooses the 9-state Agreement, that aspect of this issue is moot.

As to airline mileage, AT&T Florida proposes that mileage should be rounded up to the next whole mile. Intrado proposes that mileage be rounded up to one-fifth of a mile. As Ms. Pellerin testified, rounding up one whole mile is the standard in the industry for carrier interconnection. (Tr. 293). This industry standard for mileage rounding is stated in the Alliance for Telecommunication Industry Solutions' ("ATIS") Multiple Exchange Carrier Access Billing ("MECAB") Guidelines,

ATIS - 0401004-0009, Section 3.4. (*See* Exhibit 5, AT&T Florida's Response to Staff's First Set of Interrogatories, Item No. 10c.) As examples of this standard practice, Ms. Pellerin quoted specifically portions of AT&T Florida's Switched Access Tariff and Dedicated Access Services Tariff, which incorporate the practice of rounding to the next whole mile. (Tr. 293-94).

As to rounding for reciprocal compensation, AT&T proposes a reasonable rounding increment, *i.e.*, one minute, while Intrado proposes rounding up six seconds. Once again, AT&T has made a proposal that tracks the standard industry practice for carrier billing, while Intrado has proposed an approach that deviates from this standard practice. (Tr. 295). Ms. Pellerin also testified that "AT&T's industry standard practice of rounding reciprocal compensation usage to the next whole minute is in effect with other carriers." (Tr. 296).

Rather than accepting the standard industry practice, Intrado has obviously proposed a much shorter rounding increment. The difference, however, between the standard increment proposed by AT&T Florida, and the differing interval proposed by Intrado represents a financial impact that is, in Ms. Pellerin's words, "truly de minimus". (Tr. 296.). To prove this point, Ms. Pellerin testified as to a hypothetical example in which Intrado would have 100 trunk groups dedicated to Section 251(b)(5) usage, and all were rounded up by a full minute, rather than the six seconds proposed by Intrado. The resulting difference would be *$.07* per month. (*Id.*). For 1000 trunks, the difference would be $8.40 a month. (*Id.*). Clearly, Intrado has offered no reason, financial or otherwise, to deviate from the standard practice.

Finally, this issue provides an especially good example of the difficulties that arise from Intrado's efforts to mismatch the 13-state template with AT&T's Southeast region network. As previously noted, this issue arises solely in the context of the 13-state Agreement. Moreover, this discussion is misplaced, since it refers to a mechanism for billing that exists in the 13-state portion of AT&T's national service area, but not in the 9-state Southeast region. As Ms. Pellerin noted, "the former BellSouth states, including Florida, bill intercarrier compensation based on factors rather than actual usage. [Therefore,] ... any discussion of rounding increments is meaningless". (Tr. 294). Curiously, Mr. Hicks acknowledges that this issue is resolved if the 9-state template is used because AT&T's Southeast region "does not use a per minute of use calculation for intercarrier compensation," (Exhibit 2, Intrado's Response to Staff's First Set of Interrogatories, Item No. 13c), yet Intrado still maintains its position that six-second rounding is appropriate. Thus, Intrado has not only raised an issue that has a negligible financial impact, it has also raised (and still maintains) an issue that is inconsistent with the reality of the network procedures that are utilized by AT&T Florida in Florida.

Issue 29(b): Is AT&T permitted to impose unspecified non-recurring charges on Intrado Comm?

**AT&T Florida's Position: This issue does not exist if the 9 state template is used. AT&T proposes that services ordered and provided that are not included in the ICA and for which there is no tariffed rate be priced based on the AT&T's standard generic contract rate.

This issue involves two provisions of the Agreement: Pricing §§ 1.9.1 and 1.9.2, which relate to the same dispute. Specifically, the parties have agreed (in Pricing § 1.9) that AT&T Florida is obligated only to provide products and services to Intrado for which there are rates, terms and conditions in the ICA. Pricing §§ 1.9.1 and 1.9.2 address the procedure to follow if Intrado orders a product that is not included in the Interconnection Agreement, and AT&T Florida inadvertently provides the product or service (even though under no obligation to do so). The

parties have already agreed in Pricing § 1.9.1 that, in these circumstances, Intrado will pay the tariffed rate if a tariff exists. AT&T Florida further proposes that if no tariff exists, the standard generic rate that any other CLEC would pay for the same product or service would apply to Intrado. This rate would be published on AT&T's website. (Tr. 297-98).

Intrado, on the other hand, proposes that, under these circumstances, AT&T Florida must "propose rates pursuant to the process required in Sections 251 and 252 of The Act". (Tr. 297). Thus, in the unlikely event that AT&T inadvertently provides services that are outside of the scope of the Agreement, it would have to propose and negotiate a rate for services that have already been rendered. Presumably, Intrado would be free to reject the price that is proposed for the service it has already ordered and received. Again, this circumstance should not occur very often, but if it does occur, AT&T Florida should be entitled to charge Intrado the going rate for the service it has ordered (outside of the scope of the Interconnection Agreement), without the prospect of protracted price negotiations.

AT&T Florida proposes Section 1.9.2 as a companion to Section 1.9.1. This section would simply provide that, under the circumstances identified in Section 1.9.1, Intrado would be billed for, and would be required to pay for the product or service. This AT&T Florida-proposed language would also state that A&T Florida's provision of a service that is not within the scope of the Interconnection Agreement once would not bind AT&T Florida to provide the service in the future. Again, these provisions would only arise when Intrado orders something that is outside the Interconnection Agreement, and AT&T Florida inadvertently provides the product, even though it is under no obligation to do so. Under these circumstances, it only makes sense that Intrado should be required to pay for what it has ordered. Section 1.9.2 simply creates a mechanism to achieve this reasonable objective.

Issue 33: Should AT&T be required to provide UNEs to Intrado Comm at parity with what it provides to itself?

**AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.

Issue 34(a): How should a "non-standard" collocation request be defined?

**AT&T Florida's Position: Issue 34 does not exist if the 9 state template is used. A non-standard collocation request is any collocation request that is beyond the terms and conditions set forth in the Interconnection Agreement.

Issue 34(b): Should non-standard collocation requests be priced based on an individual case basis?

**AT&T Florida's Position: Yes. Intrado should be required to pay for these collocation arrangements based on the specific criteria of the request. Intrado's proposal to pay the same as other carriers have paid for similar work should be rejected. (1) The term "similar" is too vague. (2) Older "similar" arrangements may reflect obsolete costs.

The parties are fundamentally in agreement as to the definition of a "non-standard" collocation request. Specifically, they have agreed to language in Section 2.22 of the Physical Collocation Appendix that a "non-standard collocation is any collocation request that is beyond the terms, conditions, and rates set forth in Appendix Physical Collocation" (Tr. 322). The parties also seem to be in general agreement that pricing for non-standard collocation should be determined on a case-by-case basis. Thus, the only real dispute is language that Intrado seeks to include in the Appendix to limit the parameters of this Individual Case Basic ("ICB") pricing. Specifically, Intrado seeks to add the following language to the above referenced Section 2.22:

> ... NSCR charges shall not apply to CLEC requests for collocation or interconnection[28] for which AT&T-(STATE) has existing similar arrangements with other communications service providers. The charges for such similar existing arrangements requested by CLEC shall be in parity with AT&T-(STATE) charges for existing similar arrangements.

(Tr. 323).

Thus, Intrado's proposed language would restrict AT&T Florida to charging Intrado for requested physical collocation arrangements the same rate as it charged other carriers that have obtained "similar" arrangements at any point in the past.

The difficulty with Intrado's proposal is that a particular request by Intrado would or would not cost the same as an arrangement previously requested by another carrier based on an assessment of whether the two requests are "similar". Intrado has offered no definition of this term for pricing purposes. Thus, as Ms. Pellerin testified "while another carrier might have what Intrado characterizes as an arrangement 'similar' to what Intrado requests, such arrangement may actually be quite different and may impose on AT&T Florida different provisioning costs". (Tr. 324). Further, as Ms. Pellerin also noted, "another carrier's collocation arrangement may have been engineered and provisioned several years prior to Intrado's request, making any associated pricing obsolete and inappropriate for application to Intrado". (*Id.*). Thus, adoption of Intrado's limitation that the pricing must be the same as "similar" past requests will do little or nothing to provide a useful pricing guide, and will instead create the likelihood of future disputes as to what does or does not constitute a "similar" request. AT&T Florida submits that the better approach would be for AT&T Florida to price non-standard collocation requests by Intrado based on the specific request, and the specific circumstances that pertain at the time of the request. As Ms. Pellerin noted, if

[28] It is unclear why Intrado also included requests for interconnection in its proposed language in Section 2.22 of the physical collocation appendix. Only physical collocation may be requested pursuant to Appendix Physical Collocation. Interconnection must be requested pursuant to the 911, 911 NIM, NIM and/or ITR appendices or via AT&T Florida's tariffs.

Intrado objects to the charges AT&T Florida proposes, then it always has the option of invoking dispute resolution pursuant to the Interconnection Agreement. (*Id.*).

> **Issue 35: Should the Parties' interconnection agreement reference applicable law rather than incorporate certain appendices which include *specific terms and conditions for all services*?**
>
> **AT&T Florida's Position: This issue does not exist if the 9-state template is used. This issue was resolved in the context of negotiations in Ohio using the 13 state template. Thus, even if the 13 state template is used, no substantive dispute remains. See Issue 2, for additional discussion.
>
> **Issue 36: Should the terms defined in the interconnection agreement be used consistently throughout the agreement?**
>
> ** AT&T Florida's Position: Defined terms should be appropriately capitalized throughout the interconnection agreement based on the use of the terms. There may be instances in which Intrado has capitalized terms that are not used in a manner consistent with the definition. In these cases, capital letters should not be used.

The dispute regarding this issue centers on when should terms be capitalized in the Parties' interconnection agreement. As explained by Ms. Pellerin, it is AT&T Florida's position that words should only be capitalized when their use is consistent with the defined terms. (Tr. 300). Specifically, as noted by Ms. Pellerin, AT&T Florida is concerned that there may be instances in which Intrado has capitalized terms that are not used in a manner consistent with the definition. (*Id.*). As further noted by Ms. Pellerin in her testimony, in the 13-state template, End User is defined relative to customers of AT&T and Intrado specifically, not end users of other parties generally. (*Id.*). It would be more efficient and appropriate for the parties to make any necessary capitalization revisions during the process of conforming the ICA to the arbitration order and preparing it for signature. This type of cosmetic revision is normally not raised as an issue for arbitration but rather is dealt with during the negotiation process and/or when conforming an interconnection agreement following arbitration of the substantive issues. To the extent the parties have a remaining disagreement as to whether a particular word should be capitalized in the ICA, the parties may seek Commission assistance. For these reasons, the Commission should adopt AT&T

Florida's position that defined terms should only be appropriately capitalized throughout the Interconnection Agreement based on the use of the terms.

CONCLUSION

For the reasons set forth above, the Commission should find that Intrado is not entitled to an Interconnection Agreement pursuant to § 251, and should, therefore, deny Intrado's Petition for Arbitration. If the Commission determines that Intrado is entitled to an Interconnection Agreement, it should order the use of the 9-state Agreement and adopt AT&T Florida's positions on all issues that remain unresolved.

Respectfully submitted this 14th day of August, 2008.

AT&T FLORIDA

E. EARL EDENFIELD, JR.
TRACY W. HATCH
MANUEL A. GURDIAN
c/o Gregory R. Follensbee
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

LISA S. FOSHEE
J. PHILLIP CARVER
AT&T Southeast
Suite 4300, AT&T Midtown Center
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0710

#718423