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March 3, 2009

Via Electronic Filing

Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: **Docket No. 080134-TP**

Dear Ms. Cole:

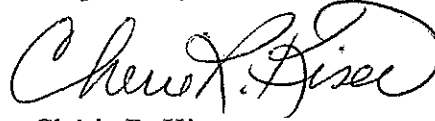
Intrado Communications Inc. (“Intrado Comm”), by its attorneys, respectfully submits this supplemental authority in connection with the above-referenced case. On February 27, 2009, Verizon Florida LLC (“Verizon”) submitted in the above-referenced proceeding a copy of a Proposed Arbitration Decision in the Illinois arbitration proceeding between Intrado Comm and AT&T Illinois. Intrado Comm strongly disagrees with Verizon’s contention that the Proposed Arbitration Decision from Illinois is “relevant” to this matter for the following reasons:

- The Proposed Arbitration Decision is not a final decision. The decision is a recommended administrative law judge decision that remains subject to review and revision by the full Illinois commission. Intrado Comm filed written exceptions and reply exceptions to the decision, which are attached. A final decision from the full Illinois commission is expected either March 17 or March 25, 2009.
- Unlike Intrado Comm’s arbitration proceeding with AT&T in Illinois, the issue of whether Intrado Comm is entitled to Section 251(c) interconnection is not a matter that has been presented to the Florida Public Service Commission for arbitration in this proceeding. This is based on the agreement reached between Intrado Comm and Verizon that Intrado Comm’s entitlement to Section 251(c) would not be an issue for arbitration between the Parties. For this reason, *Order Establishing Procedure* issued in this matter on November 12, 2008 does not reflect this as an issue for arbitration.

Accordingly, the Illinois Proposed Arbitration Decision filed by Verizon is irrelevant to the issues to be decided by the Commission in this proceeding.

If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chérie R. Kiser". The signature is written in a cursive, flowing style with a large initial "C".

Chérie R. Kiser

Counsel for Intrado Communications Inc.

Attachments

cc: Service List (via electronic mail and US mail)

Attachment 1

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

In the Matter of the Petition of Intrado Inc. for)	
Arbitration Pursuant to Section 252(b) of the)	
Communications Act of 1934, as amended, to)	Docket No. 08-0545
Establish an Interconnection Agreement with)	
Illinois Bell Telephone Company d/b/a)	
AT&T Illinois)	

Intrado Inc. Brief on Exceptions

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Dated: February 23, 2009

Its Attorneys

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**STATE OF ILLINOIS
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Illinois Bell Telephone Company d/b/a)	
AT&T Illinois)	

Intrado Inc. Brief on Exceptions

Intrado Inc. (“Intrado”), by its attorneys, hereby submits its Brief on Exceptions in connection with Intrado’s Petition for Arbitration (“Petition”) to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois (“AT&T”) pursuant to Section 252(b) of the Communications Act of 1934, as amended (“Act”).¹ The Illinois Commerce Commission (“Commission”) should adopt the exceptions set forth herein, reject the finding in the Proposed Arbitration Decision (“PAD”)² that Intrado does not offer telephone exchange service because it is based on an erroneous interpretation of federal law, and direct the Administrative Law Judges (“ALJs”)³ to arbitrate the remaining unresolved issues pursuant to Section 251(c) and, as necessary, Section 251(a) of the Act.

Intrado’s 911 service satisfies each prong of the telephone exchange service definition as interpreted by the Federal Communications Commission (“FCC”) because it allows Intrado’s public safety answering point (“PSAP”)³ customers to receive 911 calls and intercommunicate

¹ 47 U.S.C. § 252(b).

² Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Proposed Arbitration Decision (Feb. 13, 2009) (“PAD”).

³ For ease of reference, Intrado uses the term “PSAP” to refer to any Illinois public safety agency, Emergency Telephone System Board, or other entity that may be responsible for purchasing 911/E911 services to ensure consumers living in the relevant geographic area can reach emergency responders.

with all 911 callers programmed to reach the particular PSAP. In the alternative, the Commission should direct the ALJs to grant Intrado's request for an interconnection agreement consistent with Intrado's positions and proposed interconnection agreement language for all unresolved issues pursuant to Section 251(a) of the Act. As the PAD acknowledges, Intrado is a telecommunications carrier⁴ and interconnection is a duty of all telecommunications carriers under Section 251(a) regardless of whether they offer "telephone exchange service."⁵ As explained below, the Commission has previously recognized the public benefit of regulating 911 services as well as its authority to arbitrate and oversee 251(a) interconnection agreements. The Commission should therefore direct the ALJs to arbitrate the remaining issues between the Parties pursuant to either Section 251(c), Section 251(a), or both. Such a ruling will promote the goals of the Act by removing the barriers to entry erected by AT&T and the PAD.⁶

⁴ PAD at n.3 ("Intrado is certificated to provide intrastate facilities-based and resold local and interexchange telecommunications services."); *see also* Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Order (Dec. 20, 2000); Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Amendatory Order (Jan. 31, 2001); *SCC Communications Corp. Name Change to Intrado, Inc.* (filed Oct. 11, 2001).

⁵ PAD at 3; *see also* 47 U.S.C. § 251(a) (setting forth the interconnection obligation of all telecommunications carriers); 47 U.S.C. § 153(47) (defining "telephone exchange service").

⁶ 47 U.S.C. § 251. Section 251 was intended to facilitate "[v]igorous competition," which Congress understood "would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [incumbent carriers]." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 16 (1996) ("*Local Competition Order*") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). The process established by Section 251 and the FCC's implementing rules eliminates these barriers to entry to give competitors like Intrado "a fair opportunity to compete" in the marketplace. *See id.* ¶ 18. The opening of the local exchange market to competition was "intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets." *Id.* ¶ 4. To ensure that the competition contemplated by Section 251 would flourish, the Act specifically condemns state statutes, regulations, or legal requirements that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). Thus, no state may "erect legal barriers to entry to telecommunications markets that would frustrate the 1996 Act's explicit goal of opening local markets to competition." *TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e) and 253*, 13 FCC Rcd 16400, ¶ 8 (1998).

ARGUMENT

I. THE PROPOSED ARBITRATION DECISION SHOULD BE REJECTED BECAUSE IT MISCONSTRUES FEDERAL LAW WITH RESPECT TO THE DEFINITION OF TELEPHONE EXCHANGE SERVICE

Interconnection pursuant to Section 251(c)(2) of the Act requires a carrier to provide “telephone exchange service” or “exchange access” as defined in the Act.⁷ The PAD correctly recognizes that the Act’s definition of “telephone exchange service” presents two alternative meanings and a carrier’s service can qualify as telephone exchange service under either alternative.⁸ The PAD also correctly determines that Intrado’s 911 service satisfies the “within a telephone exchange” and “exchange service charge” requirements of the telephone exchange service definition.⁹ The PAD further recognizes that to “minimize the potential for error, failure or overload, [Intrado’s 911 service] telecommunications path is *not* designed for calls in the opposite direction.”¹⁰ The PAD further concludes that Intrado’s 911 service design as “a terminating only service” that prohibits outbound calls on 911 circuits is consistent with the Illinois rules for a carrier to provide 911 services.¹¹

Thus, despite the PAD’s finding that Intrado’s 911 service meets all of these other qualities of the federal definition and Illinois rules, the PAD incorrectly interprets federal law with respect to the “intercommunication” prong of the federal definition.¹² Specifically, the PAD states that call transfer “reroutes a call originated by the person placing the inbound call to

⁷ 47 U.S.C. § 251(c)(2).

⁸ PAD at 6.

⁹ PAD at 15-16, 16-17.

¹⁰ PAD at 7 (emphasis added).

¹¹ PAD at 7; *see also* 83 ILL. ADM. CODE 725.500(a), (d).

¹² PAD at 12.

the PSAP”¹³ and concludes that Intrado’s call transfer capability does not satisfy the intercommunication test set forth in the FCC’s *Directory Assistance Order*.¹⁴ The PAD’s discussion of the intercommunication prong, however, wrongly fixates on the transfer of 911 calls rather than the service being purchased by the PSAP. The finding that Intrado does not offer telephone exchange service should therefore be rejected.

The PSAP is purchasing 911 service from Intrado so that it can receive calls from all 911 callers programmed to reach that PSAP, *i.e.*, so that the PSAP can intercommunicate with those 911 callers. Indeed, in another section of the PAD, the ALJs recognize that the “core purpose” of 911 service “is to link the caller to the responders that can most quickly and readily provide assistance.”¹⁵ Yet, when evaluating whether Intrado’s service provides intercommunication, the ALJs ignore this critical “core purpose” of the service.

As required by the FCC’s *Directory Assistance Order*,¹⁶ Intrado’s 911 service interconnects all 911 callers in a specific geographic area to the PSAP responsible for receiving those 911 calls.¹⁷ The PAD’s conclusion that Intrado’s 911 service “enables communication only with a predetermined PSAP”¹⁸ ignores the nature of the service being purchased by the PSAP. Analysis of Intrado’s 911 service should not be from the perspective of the 911 caller. The relevant inquiry is whether Intrado’s customer (end user/PSAP) purchasing the 911 service will receive the intercommunication it seeks with the 911 callers needing to reach emergency

¹³ PAD at 8.

¹⁴ PAD at 12.

¹⁵ PAD at 15-16.

¹⁶ *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736 (2001) (“*Directory Assistance Order*”).

¹⁷ Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; *see also* *Directory Assistance Order* ¶¶ 17, 21; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶¶ 17, 23, 30 (1999) (“*Advanced Services Order*”).

¹⁸ PAD at 12.

assistance. It makes no difference whether the “end-user” can communicate with any other entity via 911 dialing;¹⁹ it only matters whether the PSAP can communicate with any person dialing 911 to reach that PSAP.

As the FCC has determined, a service satisfies the “intercommunication” requirement “as long as it provides customers with the capability of intercommunicating with other subscribers.”²⁰ Intrado’s 911 service ensures that its PSAP customers are able to communicate with those making 911 calls. By virtue of Intrado’s 911 service, PSAPs are able to communicate with others within a local calling area, which is a hallmark of “intercommunication.”²¹

Further, the PAD’s conclusion that transport of 911 calls from an incumbent local exchange carrier (“ILEC”) 911 tandem to a terminating PSAP is not intercommunication is irrelevant.²² As explained above, the relevant communication is that which occurs between the 911 caller on one end of the call and Intrado’s PSAP customer on the other end of the call, not a portion of the transmission between an ILEC 911 tandem and a PSAP. Transport of a call between two entities (*i.e.*, two customers) is intercommunication regardless of the type of call that is being transported because it “permit[s] communications among subscribers within an exchange or within a connected system of exchanges.”²³ The fact that Intrado will pick up the 911 call at the ILEC’s selective router does not change the intercommunication provided to Intrado’s PSAP customer and 911 callers or vice versa when the ILEC is the 911 system provider that Intrado 911 callers must reach. Indeed, all competitors routinely pick up plain old telephone

¹⁹ Cf. PAD at 12.

²⁰ *Advanced Services Order* ¶ 23.

²¹ *Directory Assistance Order* ¶ 21; *see also* PAD at 15 (“There is no question that Intrado’s 911 service will facilitate 911 calls that originate and terminate within the same exchange area.”).

²² PAD at 14.

²³ *Advanced Services Order* ¶ 20.

service (“POTS”) calls at an ILEC tandem and transport those calls to their customer or deliver 911 calls to ILEC selective routers for delivery to ILEC PSAP customers. Intrado’s interconnection arrangement for 911 service to its PSAP customers will be no different. Thus, the remaining unresolved issues should be addressed pursuant to Section 251(c) of the Act and, to the extent necessary, Section 251(a) of the Act.

II. IN THE ALTERNATIVE, THE COMMISSION SHOULD DIRECT THE ALJS TO ARBITRATE THE OUTSTANDING ARBITRATION ISSUES PURSUANT TO SECTION 251(A) OF THE ACT

Under Section 251(a) of the Act, all telecommunications carriers are required to interconnect directly or indirectly with all other telecommunications carriers.²⁴ As the Commission has previously found, this section of the Act “contains no restrictions on who may interconnect with whom.”²⁵ Thus, there is no requirement that a carrier provide telephone exchange service or any service other than telecommunications service to obtain interconnection under Section 251(a).²⁶

The PAD wrongly concludes that Section 251(a) is not at issue in this proceeding.²⁷ Intrado’s Petition for Arbitration contemplated a review of the outstanding issues between the Parties pursuant to Sections 251 and 252 of the Act. Indeed, Intrado invoked Section 251

²⁴ 47 U.S.C. § 251(a); *see also* Transcript at 139 (Pellerin) (AT&T’s witness noting that “all telecommunications carriers have obligations under 251A”).

²⁵ Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005); *aff’d Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007).

²⁶ It is not disputed that Intrado qualifies as a telecommunications carrier. The PAD recognizes that Intrado is certificated by the Commission to provide intrastate facilities-based and resold local and interexchange telecommunications services. *See* PAD at n.3.

²⁷ PAD at n.14.

generally when it made its negotiation request to AT&T.²⁸ Further, the issue of whether Intrado is entitled to Section 251(c) interconnection or some other form of interconnection has been discussed at length in this proceeding. AT&T acknowledged that its proposal for a “commercial agreement” could be a Section 251(a) agreement.²⁹ Moreover, AT&T urged the ALJs to adopt the findings of the Florida commission, which determined that AT&T and Intrado could negotiate an interconnection agreement pursuant to Section 251(a) in Florida.³⁰

While Intrado is entitled to interconnection under 251(c) as explained above, the issue of whether AT&T and Intrado’s interconnection agreement should be established pursuant to Section 251(a) is squarely before the Commission and the Commission has recognized its authority to analyze interconnection requests under Section 251(a) in the past. In the arbitration proceedings between Sprint and several rural carriers, the Commission recognized that the rural carriers were required to negotiate interconnection terms and conditions with Sprint pursuant to Section 251(a)³¹ and subsequently arbitrated the interconnection agreements between Sprint and

²⁸ Letter from Thomas Hicks, Intrado, to AT&T Contract Manager (Apr. 11, 2008) (Attachment 2 to Intrado Petition for Arbitration) (requesting negotiation of an interconnection agreement in the state of Illinois pursuant to Section 251).

²⁹ Transcript at 132, lines 12-16 (Pellerin) (“AT&T has never taken the position that it was not willing to negotiate a commercial agreement with Intrado. Whether you refer to that as 251A agreement or not, I don’t have an opinion on that.”); Transcript at 139, lines 8-19 (Pellerin) (“Q: Does AT&T have any obligation to negotiate or interconnect with Intrado outside of Section 251? A: Well, I think we are here talking about Section 251C interconnection negotiations and arbitration. Beyond that, all telecommunications carriers have obligations under 251A. Q: So the commercial agreement that you believe should be entered into would be pursuant to 251A? A: Potentially.”).

³⁰ Transcript at 132, lines 7-11 (Pellerin) (“Q: The Staff recommendation, however, did determine that the parties can negotiate an interconnection agreement pursuant to Section 251A; is that correct? A: That’s my understanding.”).

³¹ Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005).

those carriers pursuant to Section 251(a).³² On review, the Commission's findings were upheld by the United States District Court for the Southern District of Illinois.³³

The Commission's decisions in the interconnection proceedings between Sprint and the rural carriers are consistent with the findings of numerous other state commissions, including those in California, Indiana, Iowa, New York, North Dakota, and Washington.³⁴ Further, the Ohio commission recently found that it has authority to arbitrate and oversee all Section 251 interconnection agreements, not just those pertaining to Section 251(c).³⁵ Indeed, the Ohio

³² Docket No. 05-0402, *Sprint Communications L.P. d/b/a Sprint Communications Company L.P. Petition for Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers pursuant to Section 252 of the Telecommunications Act of 1996*, Arbitration Decision (Nov. 8, 2005).

³³ *Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007).

³⁴ See, e.g., California Decision 06-08-029, *Application by Pacific Bell Telephone Company d/b/a SBC California for Arbitration of an Interconnection Agreement with MCI Metro Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion Approving Arbitrated Interconnection Agreement as Amended (C.P.U.C. Aug. 24, 2006) ("An indirect interconnection right is given to each [competitive local exchange carrier] that the [incumbent local exchange carrier] cannot by itself deny or vacate. The [incumbent local exchange carrier] has the duty to negotiate the provision of interconnection, including indirect interconnection, and if negotiations fail, it may be arbitrated."); Indiana Cause No. 43052-INT-01, *Sprint Communications Company L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc.*, Opinion (I.U.R.C. Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding); Iowa Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Arbitration Order (I.U.B. Mar. 24, 2006) (finding rural carriers must interconnect with Sprint pursuant to Section 251(a) and arbitrating those interconnection agreements); New York Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005) (finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); Order Denying Rehearing (N.Y.P.S.C. Aug. 24, 2005), *aff'd Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006); North Dakota Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C. May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); Washington Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision (Wash. U.T.C. Feb 28, 2003) ("[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).").

³⁵ Ohio Case No. 07-1216-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Award at 15 (Sept. 24, 2008) ("*Ohio Embarq Arbitration Award*") (Spence-Lenss Direct at Attachment No. 2).

commission found that “[e]ven though neither party raised the application of Section 251(a) as an issue, the [Ohio commission] is not barred by mere omission from applying applicable law [because the Ohio commission] has the authority and the requirement to consider Section 251(a) where it is applicable.”³⁶ Based on those findings, the Ohio commission determined that Section 251(a) along with its broad authority over 911 service supported the adoption of Intrado’s proposed interconnection arrangements.³⁷ Arbitration is clearly permitted for provisions outside of 251(c).³⁸

Arbitration of Intrado’s interconnection agreement with AT&T pursuant to Section 251(a) will ensure that the Commission retains critical oversight over 911 interconnection and 911 services generally.³⁹ While the PAD proposes that the Commission reverse several of the conclusions in the *SCC Order*, the PAD does not address the significant public interest findings made by the Commission in that decision. Specifically, the Commission has already determined that it is “of the utmost importance that the continuance and quality of a 9-1-1 call be preserved and enhanced.”⁴⁰ As “a matter of public safety,” the Commission determined that competitive

³⁶ Ohio Case No. 08-537-TP-ARB, *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 Cincinnati Bell Telephone Company*, Entry on Rehearing at 11-12 (Jan. 14, 2009) (“*Ohio CBT Rehearing Award*”)

³⁷ *Ohio Embarq Arbitration Award* at 15.

³⁸ See, e.g., *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) (“where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that *any issue* left open after unsuccessful negotiation would be subject to arbitration by the [state commission]”) (emphasis in original).

³⁹ Intrado Initial Brief at 28-30.

⁴⁰ Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (Mar. 21, 2001) (“*SCC Order*”).

911/E911 services should be regulated because the “public interest is protected when [such] services are regulated.”⁴¹ The Commission reaffirmed these findings five years later:

The prospect of competitively offering E9-1-1 services is, from our perspective, a matter of far greater importance than the mere offering of local or interexchange retail service to customers. E9-1-1 service makes emergency, lifesaving protection available to every individual in even the most remote corners of the state. It further helps to safeguard residential and commercial property, protecting against the risk of loss of home or business. It is an indispensable lifeline for every individual present within Illinois.⁴²

Thus, use of Section 251(a) is consistent with the public interest standards already established by the Commission.⁴³

The Commission’s previous findings are also on par with those of the Public Utilities Commission of Ohio, which “highlight[ed] the importance of regulating competitive emergency services telecommunications carriers in light of the significant public interest surrounding the provision of 9-1-1 service.”⁴⁴ The Ohio commission found that “Commission oversight and resolution of disputes raised in [an arbitration] proceeding are of significant public interest due to the fact that the identified issues directly impact the provisioning of uninterrupted emergency 9-1-1 service.”⁴⁵ Accordingly, arbitration of Intrado’s interconnection agreement with AT&T pursuant to Section 251(a) is in the public interest.

⁴¹ SCC Order at 8.

⁴² Docket No. 04-0406, *Ramsey Emergency Services, Inc. Application for a Certificate of Local Authority to Operate as a Provider of Telecommunications Services in All Areas in the State of Illinois*, Order at 13 (May 17, 2005), *aff’d Ramsey Emergency Services, Inc. v. Illinois Commerce Commission*, 367 Ill. App. 3d 351 (2006).

⁴³ See PAD at 18 (“The Commission is therefore receptive to statutory interpretation that advances the law’s intentions and enhances public safety.”).

⁴⁴ Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 7 (Feb. 5, 2008) (“*Ohio Certification Order*”), Order on Rehearing (Apr. 2, 2008) (“*Ohio Certification Rehearing Order*”).

⁴⁵ *Ohio Embarq Arbitration Award* at 15.

CONCLUSION

For the foregoing reasons, Intrado respectfully requests that the Commission reject the PAD's finding that Intrado does not offer telephone exchange service and direct the ALJs to arbitrate the remaining issues between the Parties. In the alternative, the Commission should direct the ALJs to arbitrate the remaining issues between the Parties pursuant to Section 251(a).

Respectfully submitted,

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Dated: February 23, 2009

Its Attorneys

CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 23rd day of February 2009, I electronically filed a copy of the foregoing Brief on Exceptions of Intrado Inc. with the Clerk of the Illinois Commerce Commission and served a copy on the following via electronic mail.



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Attachment 2

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

In the Matter of the Petition of Intrado Inc. for)	
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AT&T Illinois)	

Intrado Inc. Reply Brief on Exceptions

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

In the Matter of the Petition of Intrado Inc. for)	
Arbitration Pursuant to Section 252(b) of the)	
Communications Act of 1934, as amended, to)	Docket No. 08-0545
Establish an Interconnection Agreement with)	
Illinois Bell Telephone Company d/b/a)	
AT&T Illinois)	

Intrado Inc. Reply Brief on Exceptions

Intrado Inc. (“Intrado”), by its attorneys, hereby submits its Reply Brief on Exceptions in connection with Intrado’s Petition for Arbitration (“Petition”) to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois (“AT&T”) pursuant to Section 252(b) of the Communications Act of 1934, as amended (“Act”).¹ The Illinois Commerce Commission (“Commission”) should adopt the two exceptions set forth in Intrado’s Brief on Exceptions² and find that Intrado offers telephone exchange service and is therefore entitled to interconnection under Section 251(c) of the Act as recommended by Commission Staff in this proceeding. The Commission should reject the finding in the Proposed Arbitration Decision (“PAD”)³ that Intrado does not offer telephone exchange service because it is based on an erroneous interpretation of federal law, and should direct the Administrative Law Judges

¹ 47 U.S.C. § 252(b).

² Intrado recognizes that Rule 761.430 requires “a suggested replacement statement or finding” to be included in exceptions. Given that Intrado takes exception to the majority of the statements and findings in the Proposed Arbitration Decision, it would be impractical for Intrado to include specific suggested replacement statements or findings in its exceptions other than the inclusion of the suggested replacement finding that Intrado offers telephone exchange service and is entitled to Section 251(c) interconnection.

³ Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Proposed Arbitration Decision (Feb. 13, 2009) (“PAD”).

(“ALJs”) to arbitrate the remaining unresolved issues pursuant to Section 251(c) and, as necessary, pursuant to Section 251(a) of the Act.

ARGUMENT

I. INTRADO PROVIDES TELEPHONE EXCHANGE SERVICE AND IS ENTITLED TO SECTION 251(C) RIGHTS AS STAFF HAS RECOGNIZED

As set forth in Intrado’s Briefs and Intrado’s Brief on Exceptions, Intrado’s 911 service satisfies each prong of the telephone exchange service definition as interpreted by the Federal Communications Commission (“FCC”) (Intrado Exception No. I).⁴ The PAD correctly determines that Intrado’s 911 service satisfies the “within a telephone exchange” and “exchange service charge” requirements of the telephone exchange service definition.⁵ Intrado’s service also allows Intrado’s public safety answering point (“PSAP”)⁶ customers to receive 911 calls and intercommunicate with all 911 callers programmed to reach the particular PSAP. Intrado’s service therefore satisfies the “intercommunication” requirement of the telephone exchange service definition.⁷ This is consistent with Commission Staff’s conclusions throughout this proceeding that Intrado offers telephone exchange service and is therefore entitled to interconnection pursuant to Section 251(c).⁸

Intrado also agrees with Staff’s finding that the Commission should take an expansive view of the types of entities entitled to interconnection pursuant to Section 251(c).⁹ The PAD itself acknowledges that the Commission is “receptive to statutory interpretation that advances

⁴ Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; Intrado BOE at 3-6.

⁵ PAD at 15-16, 16-17.

⁶ For ease of reference, Intrado uses the term “PSAP” to refer to any Illinois public safety agency, Emergency Telephone System Board, or other entity that may be responsible for purchasing 911/E911 services to ensure consumers living in the relevant geographic area can reach emergency responders.

⁷ Intrado Initial Brief at 12-16, 18-20; Intrado Reply Brief at 6-10; Intrado BOE at 3-6.

⁸ Staff Initial Brief at 9-10; Staff BOE at 2.

⁹ Staff BOE at 2.

the law’s intentions and enhances public safety;”¹⁰ but the PAD’s conclusions ignore this important public interest objective. The approach advocated by Staff in its Brief on Exceptions is consistent with the Commission’s prior findings in Sprint’s arbitration proceeding with various rural carriers.¹¹ In that case, the Commission determined that supporting Sprint’s entry into the market was “significant” because it represented “one of the first, if not the first,” competitive alternatives in the geographic areas Sprint sought to serve.¹² The same is true here. The Illinois public safety agencies Intrado seeks to serve are a class of customers with no competitive choice of service provider today.¹³ Thus, a finding that Intrado is entitled to interconnect with AT&T, pursuant to Section 251(c), Section 251(a) or both, would “greatly serve[] the public interest” and would allow the Illinois public safety market “to benefit from the competitive telecommunications market”¹⁴ as Congress, the Illinois legislature, and this Commission envisioned.¹⁵

¹⁰ PAD at 18.

¹¹ Staff BOE at 2 (citing Docket Nos. 05-0259, *et al.*, *Cambridge Telephone Company, et al. Petitions for Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for Any Other Necessary or Appropriate Relief*, Order at 13 (July 13, 2005) (“*Sprint-Rural Order*”); *rehearing and reconsideration denied*, Notice of Commission Action (Aug. 26, 2005); *aff’d Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007)).

¹² *Sprint-Rural Order* at 11.

¹³ Direct Testimony of Carey F. Spence-Lenss on behalf of Intrado Inc. at 24, lines 4-6 (Intrado Hearing Exhibit 4).

¹⁴ *Sprint-Rural Order* at 18.

¹⁵ Section 251 was intended to facilitate “[v]igorous competition,” which Congress understood “would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [incumbent carriers].” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 16 (1996) (“*Local Competition Order*”) (intervening history omitted), *aff’d by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). The process established by Section 251 and the FCC’s implementing rules eliminates these barriers to entry to give competitors like Intrado “a fair opportunity to compete” in the marketplace. *See id.* ¶ 18. The opening of the local exchange market to competition was “intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets.” *Id.* ¶ 4. Illinois law also supports a competitive telecommunications market. *See, e.g.*, 220 ICLS 5/13-103 (directing the Commission to ensure the “development of and prudent investment in advanced telecommunications services and networks that foster economic development of the State

The Commission’s conclusions in the Sprint proceedings are also consistent with its previous findings in the *SCC Order* that the “public interest is protected when [911/E911] services are regulated.”¹⁶ As Staff notes, the PAD does not adequately address “how the facts obtained in the instant matter differ from those in” the *SCC* proceeding.¹⁷ Indeed, Staff correctly recognizes that Intrado’s current 911/E911 product will offer significantly more than SCC’s service offering.¹⁸ Unlike SCC, Intrado will not merely be a middleman, but will provide a complete, integrated service to its Illinois public safety customers. Moreover, Intrado will provide services to telematics providers (such as OnStar) and private branch exchange (“PBX”) owners who have subscribers that originate 911 calls.¹⁹ Thus, there is no justification for reversing the Commission’s prior findings in the *SCC Order* or for the Commission to accept the edits proposed by Staff to the PAD with respect to the *SCC Order* under Staff Exception No. 2.²⁰

Finally, Intrado disagrees with Staff that the classification of AT&T’s 911 service to Illinois public safety agencies has no bearing on this proceeding (Staff Exception No. 3).²¹ As evidenced by the Emergency Telephone Service Act and the Commission’s Part 725 rules, it has already been determined that 911/E911 services should be subject to a significant level of

[is] encouraged through the implementation and enforcement of policies that promote effective and sustained competition in all telecommunications service markets”) (emphasis added).

¹⁶ Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (Mar. 21, 2001) (“*SCC Order*”); see also Intrado BOE at 9-10 (discussing the Commission’s previous public interest findings).

¹⁷ Staff BOE at 3.

¹⁸ Staff BOE at 3-4.

¹⁹ Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Intrado Communications Inc. Verified Petition for Arbitration at 6, n.10 (filed Sept. 22, 2008).

²⁰ Staff BOE at 5.

²¹ Staff BOE at 7.

regulation.²² The Commission has routinely regulated the 911/E911 services provided by AT&T and other incumbents,²³ has approved of the inclusion of such services in the incumbents' regulated local exchange tariffs,²⁴ and has rejected attempts by other unqualified 911/E911 service providers to enter the market.²⁵ The statements contained in AT&T's tariff regarding its 911/E911 service and the Commission's past treatment of that and other 911/E911 services therefore have a direct bearing on the Commission's conclusions in this proceeding. If AT&T's 911/E911 service is treated as a local exchange service, there is no justification for treating Intrado's service any differently.

II. THIS ARBITRATION PROCEEDING HAS NO EFFECT ON THIRD PARTIES OR STAFF'S REQUEST FOR A GENERIC PROCEEDING

The only matter at issue in this proceeding is Intrado's right to interconnect and the interconnection arrangements that must be established between Intrado and AT&T to support Intrado's provision of 911/E911 services to Illinois PSAPs and public safety agencies consistent with Illinois and federal law. There are no third party rights at issue in this arbitration²⁶ and there is no need for the Commission to conduct a generic proceeding prior to resolving the interconnection arrangements at issue here.²⁷

The legal framework necessary to grant Intrado's interconnection request is already in place. Interconnection is available to Intrado under Section 251(c) or Section 251(a) (or both) of

²² Emergency Telephone System Act, 50 ICLS 75010, 750.11; 83 ILL. ADM. CODE PART 725.

²³ See, e.g., Docket No. 93-0037, *Revision of 83 Ill. Adm. Code 725*, Order (Sept. 13, 1995).

²⁴ AT&T's 911/E911 service to PSAPs is located in its general exchange tariff and is classified as a "telephone exchange communications service" in the tariff. See *Illinois Bell Telephone Company Ill. C.C. No. 20*, Part 8, Section 3.

²⁵ Docket No. 04-0406, *Ramsey Emergency Services, Inc. Application for a Certificate of Local Authority to Operate as a Provider of Telecommunications Services in All Areas in the State of Illinois*, Order (May 17, 2005), *aff'd Ramsey Emergency Services, Inc. v. Illinois Commerce Commission*, 367 Ill. App. 3d 351 (2006).

²⁶ Cf. Staff BOE at 8.

²⁷ Cf. Staff BOE at 10.

the Act as explained in Intrado’s Brief on Exceptions (Intrado Exception No. II).²⁸ At a minimum, Intrado is a telecommunications carrier²⁹ and interconnection is a duty of all telecommunications carriers under Section 251(a) regardless of whether they offer “telephone exchange service” as the PAD acknowledges.³⁰ Indeed, the Commission has previously found that Section 251(a) “contains no restrictions on who may interconnect with whom.”³¹ The issue of 251(a) interconnection is properly before the Commission as a result of the positions taken by AT&T in this proceeding that Intrado is only entitled to a 251(a) or commercial agreement for interconnection.³²

Further, Illinois law recognizes the possibility of a competitive provider of 911/E911 services to Illinois public safety agencies.³³ As long as Intrado’s service complies with the Commission’s rules for 911 system providers, Intrado should not be denied the right to provide this intrastate service.³⁴ Intrado’s service offering will be detailed in its tariff, which can be

²⁸ Intrado BOE at 6-10.

²⁹ PAD at n.3 (“Intrado is certificated to provide intrastate facilities-based and resold local and interexchange telecommunications services.”); *see also* Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Order (Dec. 20, 2000); Docket No. 00-0606, *SCC Communications Corp. Application for a Certificate of Authority to Provide Telecommunications Services in the State of Illinois*, Amendatory Order (Jan. 31, 2001); *SCC Communications Corp. Name Change to Intrado, Inc.* (filed Oct. 11, 2001).

³⁰ PAD at 3; *see also* 47 U.S.C. § 251(a) (setting forth the interconnection obligation of all telecommunications carriers); 47 U.S.C. § 153(47) (defining “telephone exchange service”).

³¹ *Sprint-Rural Order* at 13.

³² Intrado BOE at 6-7; *see also* Transcript at 132, lines 7-11 (Pellerin) (“Q: The [Florida] Staff recommendation, however, did determine that the parties can negotiate an interconnection agreement pursuant to Section 251A; is that correct? A: That’s my understanding.”); Transcript at 132, lines 12-16 (Pellerin) (“AT&T has never taken the position that it was not willing to negotiate a commercial agreement with Intrado. Whether you refer to that as 251A agreement or not, I don’t have an opinion on that.”); Transcript at 139, lines 8-19 (Pellerin) (“Q: Does AT&T have any obligation to negotiate or interconnect with Intrado outside of Section 251? A: Well, I think we are here talking about Section 251C interconnection negotiations and arbitration. Beyond that, all telecommunications carriers have obligations under 251A. Q: So the commercial agreement that you believe should be entered into would be pursuant to 251A? A: Potentially.”).

³³ 83 ILL. ADMIN CODE TIT. § 725.500(c)(2); *see also* Direct Testimony of Marci Schroll on behalf of the Staff of the Illinois Commerce Commission at 5, lines 103-08 (Staff Hearing Exhibit 3).

³⁴ Intrado agrees with Staff that it is not necessary to classify 911/E911 service under Illinois law. *See* Staff BOE at 9. The Commission has already determined that 911/E911 services should be regulated in adopting the Part

examined by the Commission pursuant to the same process applied to all other carriers.³⁵ To treat Intrado any differently would amount to a barrier to entry under Section 253 of the federal Act³⁶ and would be inconsistent with the Commission’s prior conclusion that promoting competition in previously non-competitive markets “greatly serve[s] the public interest.”³⁷ Thus, the proposed revisions suggested by Staff under Exceptions No. 4 and 5 are unnecessary and should be rejected.

725 rules. *See* 83 ILL. ADMIN CODE TIT. Part 725. Moreover, the PAD makes clear that 911/E911 service is a local service. *See* PAD at 15.

³⁵ 220 ILCS 5/13-505 (stating that a competitor like Intrado is only required to demonstrate that its proposed rates are reasonable); *see also* Transcript at 148, lines 13-20 (Pellerin) (AT&T’s witness acknowledging that “just and reasonable rates” is the standard in Illinois).

³⁶ To ensure that the competition contemplated by Section 251 would flourish, the Act specifically condemns state statutes, regulations, or legal requirements that “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). Thus, no state may “erect legal barriers to entry to telecommunications markets that would frustrate the 1996 Act’s explicit goal of opening local markets to competition.” *TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e) and 253*, 13 FCC Rcd 16400, ¶ 8 (1998).

³⁷ *Sprint-Rural Order* at 13; *see also* Intrado BOE at n.6 (discussing the goals of Sections 251 and 253 to promote competition).

CONCLUSION

For the foregoing reasons and those set forth in Intrado's Brief on Exceptions, Intrado respectfully requests that the Commission reject the PAD's finding that Intrado does not offer telephone exchange service and direct the ALJs to arbitrate the remaining issues between the Parties pursuant to Section 251(c), Section 251(a), or both.

Respectfully submitted,

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Dated: March 2, 2009

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CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 2nd day of March 2009, I electronically filed a copy of the foregoing Reply Brief on Exceptions of Intrado Inc. with the Clerk of the Illinois Commerce Commission and served a copy on the following via electronic mail.

/s/ Angela F. Collins

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