

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 16th day of December 2008.

CASE NO. 08-0298-T-PC (REOPENED)

INTRADO COMMUNICATIONS, INC. and
VERIZON WEST VIRGINIA INC.

Petition for Arbitration filed pursuant to §252(b)
of 47 U.S.C. and 150 C.S.R. 6.15.5.

COMMISSION ORDER

The Commission approves the November 21, 2008 Interconnection Agreement.

BACKGROUND

On March 5, 2008, Intrado Communications, Inc., (“Intrado”) petitioned for compulsory arbitration of open issues relating to an interconnection agreement with Verizon West Virginia Inc., (“Verizon”) under 47 U.S.C. §252(b).

On April 3, 2008, Commission Staff (“Staff”) filed a Memorandum stating that the parties had reached an agreement (1) to negotiate for an additional forty-five days, (2) to involve Staff in the negotiations if issues were not resolved by the twenty-third day, and (3) that if issues remain unresolved at the end of the forty-five-day period, to file a joint petition for arbitration. Staff also stated that the parties agreed to report weekly to the Commission on the progress of negotiations.

On June 12, 2008, the Commission dismissed this matter finding that Intrado failed to provide documentation concerning unresolved issues and that an arbitration petition was not properly before the Commission. It also found that the parties failed to file reports on the progress of negotiations. See, Commission Order.

On June 23, 2008, Intrado requested that the Commission reinstate the arbitration petition and establish a procedural schedule. The Commission granted the request, appointed Chief Administrative Law Judge Melissa Marland, or her designee, arbitrator, tolled the deadline in this matter until September 12, 2008, and established procedural parameters. See, August 1, 2008 Commission Order. Thereafter, the Commission extended the final decision deadline to December 19, 2008. See, August 12, 2008, and September 22, 2008 Commission Orders.

The arbitrator held a hearing on October 2, 2008, where both Intrado and Verizon presented witnesses for cross-examination. See, Transcript of October 2, 2008 hearing.

On November 14, 2008, the arbitrator issued her Arbitration Award (“Award”) on seventeen unresolved issues. The arbitrator sided with Verizon on key issues including fixing the Point of Interconnection (“POI”) on the Verizon network, rejecting the Intrado demand for dedicated trunk lines from each Verizon end office to a POI on its network and rejecting the Intrado proposal to restructure Verizon’s network with a new routing system.

On November 21, 2008, Verizon and Intrado jointly filed a text of the Interconnection Agreement (“Agreement”) reflecting the decisions in the Award.

Intrado separately objected to portions of the Award including (1) the POI and a portion of the underlying rationale discussing arbitration awards involving Intrado from Ohio¹ (“Ohio Awards”), (2) rejection of dedicated trunk lines from Verizon end offices to the Intrado network, (3) rejection of reciprocal forecasting of traffic, (4) rejection of language regarding Automatic Location Information² (“ALI”), (5) clarification of a provision in the Award regarding tariffs, (6) an objection to a discussion of the arbitrator’s jurisdiction and (7) an objection to language implying that Public Safety Answering Points (“PSAPs”) are not end users. Intrado did not submit a detailed brief on the last three objections. Intrado alleged that the arbitrator acted arbitrarily by rejecting language Intrado proposed in the areas it contests and requested that the Commission incorporate its proposed language in the Agreement. See, Intrado Exceptions.

Verizon responded on December 1, 2008, opposing the Intrado objections. Verizon argued that the Commission can only reject the Award if it conflicts with the interconnection statutes or regulations issued thereunder. See, 47 U.S.C. §252(e)(2)(B). Verizon urged the Commission to summarily reject the Exceptions because Intrado failed to allege that the Award violated the statutory standard. Id. Verizon also contended that the Award falls within the terms of the interconnection statutes, responded to each objection individually and urged the Commission to uphold the arbitrator’s decisions. See, Verizon Response to Exceptions.

¹Public Utilities Commission of Ohio Case No. 07-1216-TP-ARB, Petition of Intrado Communications, Inc. For Arbitration on 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 (Sept. 24, 2008), and 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 (Oct. 8, 2008).

²ALI is information associated with a telephone number used by PSAPs to assist in directing responders to a caller’s location.

DISCUSSION

Verizon urged the Commission to summarily reject the Intrado arguments for rejecting portions of the Agreement under 47 U.S.C. §252(e)(2)(B) because Intrado did not allege that the Award failed to comply with the terms of the interconnection statutes or any regulation issued thereunder. Although, we agree that Intrado did not formally cite any error under the federal statute, the Commission nonetheless elects to consider the substance of the Intrado arguments.

The Commission will consider Issues 3 and 12³ together, Issues 6 and 14 separately, the requests to strike various passages from the Award together and finally the request for clarification.

POI and Dedicated Trunk Lines (Issues 3 and 12)

The foremost issue of disagreement is the location of the POI between the two networks (Issue 3). Location of the POI also substantially influences the proposal for direct trunking between Verizon end offices and the Intrado network (Issue 12). Intrado argues that provisions of 47 U.S.C. §251(c)(2) and 47 C.F.R. §51.305(a) fixing the POI on the Incumbent Local Exchange Carrier ("ILEC") (Verizon) network are superseded by a subsequent provision of the same statute and regulation mandating equal quality between service provided by the ILEC to itself and any party requesting interconnection. Intrado believes that the only possible means to provide equal quality service between itself and Verizon is for Verizon to build out to a point on the Intrado network with direct trunk lines from each end office. Intrado also argues that the Commission can place the POI on its network based on a public policy need for reliable emergency communications. See, Exceptions at 6-15.

The arbitrator rejected the Intrado argument based on the clear language of the statute and regulation requiring the POI to be on the Verizon network. The explicit mandate locating the POI cannot be avoided by a novel reading of the technical quality standards as Intrado suggested. In fact, a close reading of 47 C.F.R. §51.305(a)(3) supports the arbitrator's interpretation that the equal quality mandate refers to technical standards and not to location of the POI. The Commission finds that the arbitrator followed the law and directed that the POI be on the Verizon network. As a logical corollary to that finding, the arbitrator properly determined that Verizon may organize its call delivery to the POI as it sees fit and properly rejected the Intrado demand for dedicated trunk lines from every end office to the Intrado network. See, Award at 12-15, 20.

Reciprocal Forecasting (Issue 6)

Intrado alleges that the arbitrator improperly rejected its proposed language for mutual traffic forecasting between the parties in Section 1.6.2 of the 911 Attachment to the Agreement. Intrado believes that forecasting data from Verizon is necessary to anticipate how many calls will originate on the Verizon network and terminate on the Intrado network. See, Exceptions at 16-17. The

³The Commission will use the numbering contained in the Disputed Issues Matrix submitted by the parties and used in the Award for clarity. See, Intrado Hearing Exhibit 4.

arbitrator found that potential PSAP customers were in an equal or superior position to inform Intrado of expected call volume and therefore sided with Verizon on this matter. The arbitrator also noted that Section 1.5.5 of the 911 Attachment separately allows Intrado to meet with Verizon and discuss traffic flow if needed. See, Award at 18-19. Verizon essentially concurs in the arbitrator's reasoning. See, Verizon Response.

The Commission believes that the need for trunk lines between Intrado and the Verizon network will be directly proportional to the success Intrado has selling services to PSAPs in the marketplace. Those PSAP customers will be known to and will have a business relationship with Intrado, but not with Verizon. Thus, Intrado will be better positioned than Verizon to compile the data Intrado seeks. Therefore, the Commission finds that the arbitrator's decision was sound and declines to compel Verizon to provide forecasts. Further, the Commission will not reject any portion of the Award regarding Section 1.6.2 of the 911 Attachment.

ALI Tables (Issue 14)

Intrado disputes the arbitrator's adoption of language that Verizon proposed regarding Verizon providing data for ALI steering tables in Section 1.2 of the 911 Attachment. The adopted language requires the parties to cooperate when Intrado manages an ALI database "for inclusion of Verizon End User data in the ALI database." See, Award at 21. Intrado argued before the arbitrator that its language is needed to create interoperability between competing 911 systems and that the Verizon language is insufficient to protect wireless and VoIP callers who are transferred from a PSAP served by Verizon to one served by Intrado. See, Intrado Initial Brief at 36-38. Intrado now adds that its language would require storage of pseudo Automatic Numbering Identification⁴ ("pANI") to accommodate a call transfer between PSAPs served by the competing parties. See, Exceptions at 18-20. Verizon argues that it is not obligated to provide the information Intrado seeks here and objects to any possibility of the Agreement requiring it to work to maintain an Intrado database. See, Verizon Response at 28-30.

The Commission finds that the arbitrator's decision strikes the correct balance between the interests of Verizon and public safety. Verizon correctly argues that Agreement should not impose a potential requirement on it to maintain an Intrado database or require it to provide Intrado with information beyond Verizon customers. Therefore, the Intrado language regarding ALI steering tables should be rejected.

Request to strike portions of the Award

Intrado requested that the Commission strike three passages from the Award including (1) a portion of the analysis of Issue 3 where the arbitrator analyzed the relevance of the Ohio Awards, (2) the arbitrator's discussion of Commission jurisdiction for making the Award and (3) the characterization on page nine of the Award that PSAPs are not end users. See, Exceptions at 3, 5-6.

⁴pANI is a number used in wireless E-911 to properly route an emergency call. See, Newton's Telecom Dictionary.

The Commission disagrees with the request to strike the arbitrator's discussion of the Ohio Awards. The arbitrator correctly discussed the Ohio Awards because Intrado raised them in support of its position. See, Intrado Initial Brief at 9, 20. The Commission agrees that the discussion of those matters is only persuasive authority (or dicta as Intrado described it).

The Commission also declines to remove the arbitrator's discussion of Commission jurisdiction to hear this matter. The arbitrator correctly cites the circumstances surrounding this arbitration, including a pending matter before the Federal Communications Commission challenging the applicability of arbitration to the type of service Intrado proposes. See, Award at 10-11. The Commission believes that the arbitrator's discussion properly explained her ability to hear the matter and would prove helpful to any subsequent review.

Finally, the Commission rejects the objection from Intrado to a statement on page nine of the Award distinguishing PSAPs from end users. Once read in context, the arbitrator clearly meant that the Intrado business plan only includes service to PSAPs and not to residential or commercial customers.

Thus, the Commission finds that the passages cited by Intrado had no substantive effect on the Award and rejects the request to remove them.

Request for Clarification on Issues 34 and 35

Intrado also seeks clarification regarding the applicability of state tariffs to an interconnection agreement if the tariff was developed outside the interconnection process. See, Exceptions at 4-5. The Commission notes that Intrado did not substantially brief this issue nor specifically refer to a charge that it believes is inappropriately priced by an existing Verizon tariff. Intrado also does not allege that any existing Verizon tariff charge fails to comply with the pricing standards contained in 47 U.S.C. §252(d). Id. In the Award, the arbitrator rejected the Intrado position that existing tariffs are not an appropriate guide for interconnection charges, adopted the application of existing Verizon tariffs and directed Verizon to specify exactly what tariff applied to a particular service. See, Award at 24. The Commission believes that the Award satisfied the open issues presented to the arbitrator and declines to amend her ruling.

Conclusion

Thus, the Commission rejects the Exceptions to the Award and approves the Agreement pursuant to 47 U.S.C. §252(e) because the Award is consistent with the interconnection statutes and regulations issued thereunder.

FINDINGS OF FACT

1. Intrado filed a Petition for compulsory arbitration of open issues relating to negotiation of an interconnection agreement with Verizon. See, Petition for Arbitration.
2. The Commission reconsidered its initial dismissal of the matter and appointed an arbitrator. See, August 12, 2008 Commission Order.
3. The arbitrator issued an Award on seventeen contested open issues. See, Award.
4. Verizon and Intrado filed a complete text of the Agreement reflecting the decisions contained in the Award. See, Agreement.
5. Intrado objects to portions of the Award including the arbitrator's rulings on Issues 3, 6, 12 and 14; requests that the Commission strike portions of the discussion within the Award; and seeks a clarification regarding Issues 34 and 35. See, November 21, 2008 Exceptions.

CONCLUSIONS OF LAW

1. The Commission shall reject the agreement, or any portion thereof, if the Award does not meet the requirements of 47 U.S.C. §251, 47 U.S.C. §252(d) or regulations promulgated thereunder. See, 47 U.S.C. §252(e).
2. The POI between Verizon and Intrado shall be at a point on the Verizon network. See, 47 U.S.C. §251(c) and 47 C.F.R. §51.305.
3. Locating the POI on the Verizon network obviates the need for dedicated trunk lines between Verizon end offices and the Intrado network. See, Award at 20.
4. The language adopted by the arbitrator regarding reciprocal traffic forecasting is reasonable because Verizon is not in the best position to anticipate trunk line needs for the POI with Intrado.
5. The language adopted by the arbitrator regarding ALI steering tables is reasonable because it provides for public safety without imposing burdens on Verizon beyond data regarding its end users.
6. Discussions of Commission jurisdiction to hear this matter, the Ohio Award or what constitutes an end user had no substantive effect on the Award. See, Award.
7. The Award decided all open issues presented to the arbitrator regarding pricing. Id.

8. The Award complies with the requirements of 47 U.S.C. §251, 47 U.S.C. §252(d) and the regulations promulgated thereunder.

ORDER

IT IS THEREFORE ORDERED that the Exceptions to the November 14, 2008 Award are rejected and the November 21, 2008 Interconnection Agreement filed by Verizon and Intrado is approved.

IT IS FURTHER ORDERED that on entry of this Order, this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this Order on all parties of record by United States First Class Mail and on Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

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