

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

In the Matter of the Petition of Intrado)	
Communications Inc. for Arbitration)	
Pursuant to Section 252(b) of the)	DTC 08-9
Communications Act of 1934, as Amended)	
To Establish an Interconnection)	
Agreement with Verizon New England)	
Inc. d/b/a Verizon Massachusetts.)	

**INITIAL BRIEF OF
VERIZON MASSACHUSETTS**

February 26, 2009

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND BACKGROUND	1
II. UNRESOLVED ISSUES.....	9
<u>ISSUE 1: WHERE SHOULD THE POINTS OF INTERCONNECTION BE LOCATED AND WHAT TERMS AND CONDITIONS SHOULD APPLY WITH REGARD TO INTERCONNECTION AND TRANSPORT OF TRAFFIC?</u>	9
A. The POI for Mutal Exchange of Traffic Must Be on Verizon’s Network	10
B. The "Equal-in-Quality" Requirement Does Not Cancel Out the Requirement for the POI to be on the ILEC's Network	13
C. Section 253(b) of the Act Does Not Authorize the Department to Adopt Intrado's Extreme Interconnection Arrangements	18
D. There are no "Other Sources" Authorizing the Department to Ignore the Requirement for the POI to Be on Verizon's Network	21
E. Issue 1 Is Not a Policy Issue.....	21
<u>ISSUE 2: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD GOVERN THE EXCHANGE OF 911/E911 CALLS BETWEEN THE PARTIES?</u>	24
<u>ISSUE 3: WHETHER FORECASTING PROVISIONS SHOULD BE RECIPROCAL</u>	27
<u>ISSUE 4: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION?</u>	28
<u>ISSUE 5: HOW SHOULD THE PARTIES ROUTE 911/E911 CALLS TO EACH OTHER?</u>	29
A. Intrado Has No Right to Dictate How Verizon Engineers Its Own Network	30
B. Intrado Cannot Force Its Network Architecture Proposal on Other Carriers.	33
C. Intrado’s Proposal Is Vague, Risky, and Unworkable.....	34
D. Intrado’s Proposal Is Not The Same As Verizon’s Interconnection Arrangements With Other Carriers.....	39
E. The Relationship Between Issues 1 and 5.....	40
<u>ISSUE 6: WHETHER 911 ATT. § 1.1.1 SHOULD INCLUDE RECIPROCAL LANGUAGE DESCRIBING BOTH PARTIES’ 911/E-911 FACILITIES</u>	42

<u>ISSUE 7:</u> WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES, AND, IF SO, WHAT THOSE PROVISIONS SHOULD BE.	43
<u>ISSUE 8:</u> WHETHER CERTAIN DEFINITIONS RELATED TO THE PARTIES’ PROVISION OF 911/E911 SERVICE SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT AND WHAT DEFINITIONS SHOULD BE USED?	44
<u>ISSUE 9:</u> SHOULD 911 ATT. § 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM?.....	47
<u>ISSUE 10:</u> WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E-911 RELATED SERVICES AND WHAT SHOULD INTRADO COMM CHARGE VERIZON FOR 911/E-911 RELATED SERVICES?	48
<u>ISSUE 11:</u> WHETHER ALL “APPLICABLE” TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT; WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO “TBD” RATES SHOULD BE INCLUDED IN THE AGREEMENT.	48
<u>ISSUE 12:</u> WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS.....	52
<u>ISSUE 13:</u> SHOULD THE WAIVER OF CHARGES FOR 911 CALL TRANSPORT, 911 CALL TRANSPORT FACILITIES, ALI DATABASE, AND MSAG, BE QUALIFIED AS PROPOSED BY INTRADO COMM BY OTHER PROVISIONS OF THE AGREEMENT?.....	53
<u>ISSUE 14:</u> SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPS BE QUALIFIED AS PROPOSED BY INTRADO COMM BY “TO THE EXTENT PERMITTED UNDER THE PARTIES’ TARIFFS AND APPLICABLE LAW”?.....	54
<u>ISSUE 15:</u> SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS?	56
<u>ISSUE 16:</u> SHOULD THE VERIZON-PROPOSED TERM "A CALLER" BE USED TO IDENTIFY WHAT ENTITIY IS DIALING 911, OR SHOULD THIS TERM BE DELETED AS PROPOSED BY INTRADO COMM?.....	57
III. CONCLUSION.....	58

I. INTRODUCTION AND BACKGROUND

In this arbitration, Intrado seeks interconnection with Verizon, under section 251(c) of the Communications Act of 1934 (“Act”), as amended, to provide 911/E911 services to Public Safety Answering Points (“PSAPs”).¹ Intrado will not provide local exchange service to its PSAP customers, and it will not serve any end users of its own who place 911 (or any other) calls over Intrado facilities. It will instead interconnect with Verizon to receive Verizon’s end users’ 911 calls and deliver those calls to Intrado’s PSAP customers.²

Although Intrado approached Verizon to negotiate an interconnection agreement as a certified competitive local exchange carrier (“CLEC”) in Massachusetts, and Verizon offered Intrado the same interconnection arrangements it offers to carriers providing actual local exchange service, Verizon has never conceded that Intrado is entitled to section 251(c) interconnection for its 911 services.³ Indeed, the Florida Public Service Commission dismissed Intrado’s arbitrations with Embarq and AT&T because Intrado’s 911 services are not “telephone exchange service” or “exchange access” that would entitle it to section 251(c) interconnection. The Commission advised Intrado that it could provide its services through the use of commercial agreements.⁴ Verizon Florida expects the same result in its pending arbitration with Intrado.⁵

¹ See Intrado Ex. 1 (Hicks Testimony) at 8; Intrado Ex. 2 (Currier Testimony) at 8-9; Hearing Tr. (“Tr.”) at 18.

² See, e.g., Intrado Petition for Arbitration (“Petition”) at 3; Intrado Ex. 2 at 5; Verizon (“VZ”) Ex. 1 at 6-7, 12-13.

³ See, e.g., Tr. 71-73; VZ Ex. 1 at 7-9. Mr. Currier states that Intrado’s entitlement to section 251(c) interconnection is not an issue in this proceeding, because it did not appear in the issues matrix. (Intrado Ex. 2 at 9.) But the Department may determine that it lacks the authority to address Intrado’s section 251(c) interconnection request, regardless of whether it was presented as a specific issue by the parties.

⁴ See VZ Ex. 1 at 8, citing *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with AT&T Florida*, Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) (“*Fla. AT&T/Intrado Order*”) (attached as Ex. 1 to VZ Ex. 1), at 7; *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Florida, Inc.*, Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) (“*Fla. Embarq/Intrado Order*”) (attached as Ex. 2 to VZ Ex. 1), at 8.

⁵ On December 16, 2008, Verizon filed a Motion for Summary Final Order asking the Florida Commission to dismiss Intrado’s arbitration with Verizon, as the Commission had dismissed Intrado’s arbitrations with Embarq

Just last week, the Administrative Law Judges (“ALJs”) in Intrado’s arbitration with AT&T in Illinois issued a Proposed Arbitration Decision concluding, as the Florida Commission did, that Intrado’s 911 services do not entitle it to section 251(c) interconnection:

[T]he Commission is neither willing nor authorized to expand the specific provisions of the law beyond their apparent meaning. The Congress did not say that any market entrant is entitled to interconnection under subsection 251(c)(2). Rather, it described the entrants entitled to such interconnection with particularity. Irrespective of this Commission’s interest in expanding competition, we cannot exceed the limits established by the Congress.⁶

There was, therefore, no need for the ALJs to reach the parties’ disputes about proposed interconnection agreement terms, because those disputes were “rendered moot and superfluous” by the conclusion that Intrado is not entitled to section 251(c) interconnection. (*Ill. Proposed Order* at 21.) The procedural schedule in Verizon’s arbitration with Intrado in Illinois has been suspended pending Commission action on the ALJs’ proposed order in the AT&T/Intrado arbitration.

In Intrado’s arbitrations with AT&T and Cincinnati Bell Telephone Company in Ohio, the Ohio Public Utilities Commission, likewise, ruled that Intrado was not entitled to section 251(c) interconnection for its 911 services, but must instead obtain commercial terms for such interconnection under section 251(a) of the Act.⁷ And the Arbitrators in Intrado’s arbitrations

and AT&T, because Intrado is not entitled to section 251(c) interconnection for its 911 services. Verizon’s Motion was held in abeyance pending the Commission’s ruling on Intrado’s Motions for Reconsideration of the Commission’s Orders dismissing Intrado’s arbitrations with AT&T and Embarq. At the hearing, Intrado submitted those Motions as Intrado Exhibits 4 and 5. (Tr. 65.) The Florida Staff has, since the hearing here, recommended denial of Intrado’s Motions for Reconsideration (*see* attached Exs. 1 and 2); the Commission will rule on the Petitions on March 3, 2009.

⁶ *Petition for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Illinois Bell Tel. Co.*, Proposed Arb. Decision, Docket No. 08-0545 (Feb. 13, 2009) (“*Ill. Proposed Order*”) (attached as Ex. 3), at 18.

⁷ *See* VZ Ex. 1 at 9, *citing* *Petition of Intrado Comm., Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Embarq*, Arb. Award, Case No. 07-1216-TP-ARB, (“*Ohio Embarq/Intrado Order*”), at 33 (Sept. 24, 2008) (attached to VZ Ex. 1 as Ex. 4) and Entry on Rehearing (Dec. 10, 2008) (attached to VZ Ex. 1 as Ex. 5); *Petition of Intrado Comm., Inc. for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co.*, Arb. Award, Case No. 08-537-TP-ARB, (“*Ohio CBT/Intrado Order*”), at 15 (Oct. 8, 2008) (attached to VZ Ex. 1 as Ex.

with AT&T and Verizon in Texas have also raised doubts about whether ILECs can be forced to arbitrate interconnection agreements with Intrado for the 911 services it plans to provide.⁸ At the Arbitrators' request, Verizon and AT&T submitted briefs explaining that Intrado is not, in fact, entitled to compel section 252 arbitration of an interconnection agreement because it is not providing any telephone exchange or exchange access services as defined by the Act. (VZ Ex. 1 at 9.)

The same threshold issue of Intrado's entitlement to section 251(c) interconnection is now before the FCC's Wireline Competition Bureau in Intrado's consolidated Virginia arbitration with Embarq and Verizon.⁹ In a status conference held with the FCC Staff on January 30, 2009, the Staff made clear that it would decide the threshold issue first for both Embarq and Verizon, both of which have argued that Intrado is not entitled to section 251(c) interconnection. The FCC Staff also stated that its target date for deciding the Verizon/Embarq/Intrado arbitration is May 2 of this year, two weeks after the currently scheduled April 17 decision date in this arbitration. Therefore, it may be best to extend the decision date in this case slightly, in order to receive the FCC Bureau's guidance before issuing a ruling in this case. Indeed, Verizon and Intrado have already agreed to hold their Delaware and

6). The Ohio Commission arbitrated commercial, section 251(a) agreement terms in Intrado's arbitrations with AT&T and CBT, but neither Verizon nor Intrado asked it to arbitrate section 251(a) terms in their ongoing arbitration.

⁸ VZ Ex. 1 9, citing *Petition of Intrado Comm., Inc. for Compulsory Arbitration with Verizon Southwest Under the FTA Relating to Establishment of an Interconnection Agreement*, Order No. 2, Requesting Briefs on Threshold Legal Issues (Oct. 17, 2008) (attached as Ex. 3 to VZ Ex. 1).

⁹ See VZ Ex. 1 at 7-8, citing *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq)*, WC Docket No. 08-33; *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, WC Docket No. 08-185 (consolidated by Order released Dec. 9, 2008, FCC No. DA 08-2682).

North Carolina arbitrations in abeyance pending the Bureau's decision.

Verizon offers its positions on the substantive issues here in the event that the Department wishes to move forward with deliberations on those issues at this point, despite the pendency of the threshold jurisdictional issue of Intrado's entitlement to section 251(c) interconnection at the FCC.

If this case proceeds, it is essential to keep in mind that it is an arbitration under section 251(c) of the Act. The Department's sole task is, therefore, to determine the scope of Verizon's interconnection obligations under section 251(c) and the FCC's rules implementing that section. Although Verizon and Intrado vigorously disagree about the nature and scope of Verizon's obligations under section 251(c), there is no disagreement that section 251(c) governs Intrado's arbitration petition here and the issues it raises. (*See, e.g.*, Tr. 18; VZ Ex. 1 at 6.)

This arbitration is *not* a proceeding about whether to authorize competition for 911 services in Massachusetts or to decide what the best 911 arrangements and practices are for Massachusetts. (Tr. 109.) Those broad policy questions are not before the Department and they could not, in any event, be resolved in this bilateral arbitration. (VZ Ex. 2 at 5.) Massachusetts has a statewide E911 system, under which Verizon currently provides E911 service to 273 PSAPs. The State 911 Department (formerly the Statewide Emergency Telecommunications Board) is, by statute, the agency responsible for coordinating and administering the implementation of E911 services and promulgating standards to ensure a consistent statewide approach for E911. The 911 Department is the entity that would make decisions about E911 policies, practices and providers in Massachusetts. (*See* M.G.L. ch. 6A, § 18B-I; 560 CMR, "Statewide Emergency Telecomms. Board.") The decision in this arbitration cannot affect any company's obligation to comply with its 911 tariffs and the detailed statutes and rules governing

the administration, implementation, and funding of 911 systems in Massachusetts. To the extent competitive 911 provision is authorized under Massachusetts law, the marketplace will determine the merits of Intrado's and Verizon's respective 911 products—provided the Department does not confer upon Intrado the artificial competitive advantages it seeks in this arbitration (VZ Ex. 1 at 17-18,).

Assuming the arbitration goes forward and the Department completes the review Intrado has requested—that is, evaluation of Intrado's proposals under section 251(c)—they must be rejected as unlawful and anticompetitive. Intrado's proposals are directly contrary to federal law and are not like any section 251(c) interconnection arrangements with any carrier anywhere. In fact, Intrado admits that its proposed interconnection arrangements “absolutely” differ from “typical CLEC interconnection.” (Intrado Ex. 2 at 13.)

Under its extreme proposal, Intrado would force Verizon to interconnect with Intrado *on Intrado's network*, at unspecified locations--at as many points of interconnection (“POIs”) as Intrado wishes and as far from Verizon facilities as Intrado wishes. (VZ Ex. 1 at 13, 24; 911 Att., Intrado's proposed § 1.3.1.) Intrado would require Verizon to incur the cost of at least two direct trunks from each affected Verizon end office to those POIs on Intrado's network. (VZ Ex. 1 at 40-41; Intrado Ex. 2 at 33-34; 911 Att., Intrado's proposed § 1.3.4(ii).) In addition, Intrado would require Verizon to deploy an unknown, new kind of call-sorting technology in place of Verizon's selective routers used today to sort calls to the appropriate PSAP. (VZ Ex. 1 at 45-47.) Under Intrado's plan, Verizon would have to bear the cost of Intrado's proposed new 911 network. Intrado has never denied this fact, and in fact openly recommends that the retail customers of Verizon and other carriers bear the costs of Intrado's network. (VZ Ex. 1 at 56; Intrado Ex. 2 at 21, 24.)

Intrado's business plan is, therefore, to force Verizon to provide facilities and services that Intrado will market, but that Verizon would actually provide and pay for. Under Intrado's plan, Verizon would still carry its end users' 911 calls (to Intrado's network, instead of directly to the PSAPs), but instead of being paid to do so by the PSAPs, as Verizon is today, Verizon would have to haul those calls *for free* and then, on top of that, *pay* Intrado for interconnecting on Intrado's network. This unprecedented plan is rooted in Intrado's objective of shifting as much of its network costs to Verizon as it can. (VZ Ex. 1 at 13.) When Verizon serves a PSAP, it must charge its tariffed rates for services and facilities provided to the PSAP. But Intrado's plan would appear to excuse PSAPs from paying for these same 911-related elements, even though Verizon would still provide them--thus allowing Intrado to price its overall service more attractively and providing it an unfair competitive advantage.

Contrary to Intrado's rhetoric, Verizon is *not* trying to maintain a "monopoly" over service to PSAPs in its territory (Intrado Ex 2 at 15), it has *not* tried to stop Intrado from "exercis[ing] the rights given to it by Congress" (Intrado Ex. 2 at 15), and it has *not* taken the position that Intrado has no right to seek to provide 911 services in Massachusetts (Tr. 62; VZ Ex. 1 at 20.) Indeed, Verizon remains willing to offer Intrado the same kind of interconnection arrangements it has in place today with CLECs that provide actual local exchange service. Verizon also stands ready to negotiate a commercial agreement that may better suit Intrado's plans than the section 251(c) interconnection it seeks. But Intrado has no right to the particular interconnection arrangements it proposes in this arbitration, which would be more favorable than the section 251(c) interconnection arrangements provided to any other interconnecting carrier. (VZ Ex. 1 at 10, 20.)

Intrado can provide its services using any kind of network it wishes (as long as it is consistent with Massachusetts’s 911 statutes and regulations), but Intrado cannot force Verizon to pay for that network, as it seeks to do. This point bears repeating: ***Intrado will be able to provide its 911 services under either Verizon’s proposed interconnection arrangements or Intrado’s.*** (Tr. 109.) Leaving aside the technical and reliability concerns with Intrado’s proposals (discussed below), the chief difference between Intrado’s and Verizon’s respective interconnection proposals is who bears the cost of Intrado’s proposed network configuration—Intrado or Verizon. The answer—under both governing federal law and sound policy—must be that Intrado pays for the network it seeks to establish.

Indeed, even while dismissing Intrado’s arbitration petitions for legal reasons, the Florida Commission raised the same concerns about Intrado’s self-evident cost-shifting proposals that Verizon has here. It observed that the type of interconnection arrangements Intrado is requesting “could present a serious disadvantage to [the ILEC], who would pay for Intrado Comm establishing its 911/E911 service. We are concerned that the costs for interconnection would be borne by [the ILEC].” (*Fla. AT&T/Intrado Order* at 7; *Fla. Embarq/Intrado Order* at 6.)

This concern is well justified. In fact, the costs of Intrado’s proposals are sure to be enormous, not just for Verizon but for the entire industry. As explained in more detail under Issue 5, if the Department approves Intrado’s network architecture proposal, it will change the existing 911 call delivery system in Massachusetts. CLECs and wireless carriers that today aggregate their traffic at Verizon’s selective routers for transmission to the PSAPs would no longer be able to do so and would have to establish their own direct trunks to Intrado, just as Verizon would. Verizon has 270 end offices in Massachusetts, it serves 273 PSAPs, and CLECs and wireless carriers typically send their end users’ emergency calls through Verizon’s selective

routers for sorting to the appropriate PSAP. *Given these facts, the magnitude and expense of the changes Intrado is proposing with its new network architecture would be staggering.* (VZ Ex. 1 at 21.) As Verizon has pointed out, there is no reason to consider these drastic changes, because they are completely unnecessary to allow Intrado to compete for 911 services.

If the Department proceeds to consider Intrado's proposals under section 251(c) without waiting for the FCC Bureau's decision as to whether Intrado is entitled to section 251(c) interconnection at all, it must reject Intrado's position that section 251(c) grants 911 providers like Intrado special, more favorable interconnection rights over interconnecting CLECs that provide 911 service to their end users as part of actual local exchange service.

The fundamental problem with Intrado's case is that the law under which it chose to petition for interconnection does not fit its business plan to provide 911 services. But, as the Illinois ALJs concluded, having chosen to seek section 251(c) interconnection, Intrado cannot bend that law to suit its business plan: "The Commission observes that Intrado chose its business model with full knowledge of the Federal Act. Its efforts to obtain interconnection under the Federal Act for that business model have not been entirely successful, at least thus far. It may occur that Intrado will modify its business plan to obtain interconnection more readily." (*Ill. Proposed Order* at 18.) Indeed, Intrado's resources would be better directed to negotiating reasonable commercial interconnection arrangements than pursuing arbitration of unreasonable interconnection terms to which it has no right under section 251(c).

II. UNRESOLVED ISSUES

ISSUE 1: WHERE SHOULD THE POINTS OF INTERCONNECTION BE LOCATED AND WHAT TERMS AND CONDITIONS SHOULD APPLY WITH REGARD TO INTERCONNECTION AND TRANSPORT OF TRAFFIC? (911 Att., §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1; Glossary §§ 2.63, 2.67, 2.94, 2.95.)

As noted, Intrado's proposed contract language would allow Intrado to designate POIs on its own network at its selective routers--at least two, but as many as it wishes, anywhere on its network that it wishes, within or outside Massachusetts.¹⁰ Intrado's proposed language does not specify where the POIs will be, and neither did Intrado's witnesses. (Intrado Ex. 1 at 20; VZ Ex. 1 at 24.) They testified that Intrado intended to place at least two "and possibly more" selective routers somewhere in Massachusetts, but also admitted that Intrado's proposed contract language does not require the POIs to be in Massachusetts and confirmed that Intrado plans to place POIs outside of Massachusetts. (Intrado Ex. 1 at 20-21.) Although Mr. Hicks suggested that points outside of Massachusetts would be for the convenience of Verizon and other carriers (Intrado Ex. 1 at 20-21), that is not what Intrado's proposed language says. That language would give Intrado, not Verizon, the discretion to decide where on Intrado's network the POIs would be--and this issue must, of course, be decided on the basis of the disputed contract language, rather than Intrado's claimed intentions.

Forcing Verizon to interconnect on Intrado's network is the foundation of Intrado's cost-shifting scheme. The POI is the physical and financial demarcation of the parties' respective networks, and each party bears the cost of delivering its originating traffic to the POI. (Tr. 99;

¹⁰ Intrado's proposed § 1.3.2 of the 911 Attachment states:

For areas where Intrado Comm is the 911/E-911 Service Provider, Intrado Comm shall provide to Verizon, in accordance with this Agreement, interconnection at a minimum of two (2) geographically diverse technically feasible Point(s) of Interconnection on Intrado Comm's network for the transmission and routing of 911/E-911 Calls to PSAPs for which Intrado Comm is the 911/E-911 Service Provider.

VZ Ex. 1 at 22.) Therefore, to the extent Intrado can compel Verizon to interconnect on Intrado's network, Intrado would force Verizon to incur the cost of transporting its end users' 911 traffic to those POIs, no matter how far from Verizon's network they are. This transport responsibility will be entirely one-sided, because calls will not originate from Intrado's network. As noted, Intrado's only customers will be PSAPs, and they will not place calls to Verizon's customers or anyone else.

Although Intrado has petitioned for interconnection under section 251(c) of the Act, the interconnection arrangements it seeks for its 911 service are, as it admits, "absolutely" unlike the "typical" section 251(c) interconnection arrangements Verizon has with CLECs. (Intrado Ex. 2 at 13.) Intrado argues that because its 911 traffic is different from "plain old telephone service" traffic, 911 traffic warrants unique and different interconnection arrangements. (*See* Intrado Ex. 2 at 13, 17.) To accept Intrado's position, the Department will have to find that there are different requirements for section 251(c) interconnection for 911 traffic than there are for all other traffic. As explained below, there is no basis for such a conclusion. There are no special rules for interconnection of 911 traffic, and the Department cannot create any.

A. The POI for Mutual Exchange of Traffic Must Be on Verizon's Network

As the Arbitrator observed in resolving the POI placement dispute in Intrado's arbitration with Verizon West Virginia, "this issue is quite simple to decide," because "[t]he law is clear and unequivocal."¹¹ Section 251(c) and the FCC's regulation implementing section 251(c) unambiguously provide that the point(s) of interconnection must be within the ILEC's network.

¹¹ See VZ Ex. 1 at 11, citing *Intrado Comm., 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*, Case No. 08-0298-T-PC, Arbitration Award ("W.V. Arb. Award") (attached as Ex. 7), at 12-13 (Nov. 14, 2008), *aff'd* by Commission Order (Dec. 16, 2008) ("W.V. Order") (attached to VZ Ex. 1 as Ex. 8).

Intrado seeks interconnection with Verizon under section 251(c) (and only section 251(c)) of the Act (Intrado Ex. 1 at 8 & Ex. 2 at 8-9; Tr. 18), so the Department must resolve Issue 1 in accordance with section 251(c) (if it proceeds with the arbitration at all) and reject Intrado's proposal to designate POIs on its own network.

Under FCC Rules, "interconnection" is "the linking of two networks for the mutual exchange of traffic." 47 C.F.R. § 51.5. A POI is a point where that linking of networks occurs. The location of the POI is a significant issue in part because the POI is the demarcation of financial responsibility; each carrier is financially responsible for the facilities to deliver its traffic to the POI. (Tr. at 89; VZ Ex. 1 at 22.)

Intrado proposes different POI arrangements depending on whether Verizon or Intrado serves the PSAP in a particular geographic area. Where Verizon is the designated 911/E911 service provider for a PSAP, Intrado agrees to deliver its 911/E911 calls to Verizon at a point on Verizon's network at Verizon's selective router. (Petition at 15.) This proposal correctly reflects the legal requirement for Intrado to establish a POI on Verizon's network. However, it will have virtually no practical effect because Intrado's only customers will be PSAPs, and they will not make any calls to Verizon's end users. The parties' dispute with respect to Issue 1 is, rather, about where the POI will be when Intrado is the designated 911 provider--that is, when Verizon's end users make emergency calls to PSAPs served by Intrado. In that case, Intrado's proposed language would require Verizon to build or lease transport facilities to, and interconnect within, Intrado's network at multiple points. (Verizon Ex. 1 at 24; Petition at 16; 911 Att., Intrado's proposed § 1.3.2.)

Intrado's proposal is directly contrary to federal law. Section 251(c) states that each incumbent local exchange carrier has the duty to provide "interconnection with the local

exchange carrier's network...at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2)(B). The FCC's rule implementing this provision, Rule 51.305, likewise makes clear that the incumbent LEC must provide interconnection with its network "[a]t any technically feasible point *within the incumbent LEC's network*" (emphasis added). This rule applies to all traffic exchanged between an ILEC and an interconnecting carrier. Section 251(c), under which Intrado seeks interconnection, prescribes no different rules for 911/E911 calls than it does for all other calls.

Indeed, Intrado openly recognizes that the Act requires the POI to be within the incumbent LEC's network. Its Petition even quotes the FCC's Rule 51.305(a) requiring interconnection "within the incumbent LEC's network." (Petition at 15 n. 19.) Mr. Hicks, likewise, answered "yes" to the question in his pre-filed testimony: "Does the Act require the POI to be on the ILEC's network?" (Intrado Ex. 1 at 19.) At the hearing, he again recognized that "the Act required a CLEC to interconnect on Verizon's network." (Tr. at 20.) Nevertheless, both Mr. Hicks and Mr. Currier urge the Department to deviate from this "traditional" POI arrangement required by law. (Intrado Ex. 1 at 13 & Ex. 2 at 16.)

The Department must reject Intrado's position. There is no way the explicit federal requirement for the POI to be "within the incumbent LEC's network" can also mean "outside the incumbent LEC's network." Nor can Intrado require Verizon to hand off traffic at a POI at a different location than Intrado hands off its traffic to Verizon. FCC rules provide that POIs are for "the linking of two networks for the *mutual exchange of traffic*." 47 C.F.R. § 51.5 (emphasis added). Thus, Verizon must be permitted to hand off its traffic to Intrado at the same POI location on Verizon's network.

B. The “Equal-in-Quality” Requirement Does Not Cancel Out the Requirement for the POI to Be on the ILEC’s Network

Intrado understands that it cannot win Issue 1 unless it has some legal basis for insisting on POIs on its own network. So even though Intrado recognizes that the Act requires the POI to be on the ILEC’s network, Mr. Hicks suggests that section 251(c)(2)(C)’s “equal-in-quality” requirement trumps the POI placement directive in section 251(c)(2)(B). (Intrado Ex. 1 at 16, 19.) Intrado contends that, regardless of the requirement for the POI to be within the ILEC’s network, section 251(c)(2)(C) requires Verizon to build out to and interconnect with POIs on Intrado’s network. In other words, Intrado interprets the equal-in-quality requirement in section 251(c)(2)(C) to implicitly address POI placement, even though section 251(c)(2)(B) explicitly addresses POI placement.

Intrado’s convoluted arguments are, as the West Virginia Arbitrator concluded, “ludicrous on their face.” (*W.V. Award* at 13.)

Section 251(c)(2)(C) provides that an ILEC must offer interconnection:

that is at least *equal in quality* to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.

47 U.S.C. § 251(c)(2)(C) (emphasis added).

Section 251(c)(2)(C), by its plain terms, relates to the *way* in which Verizon interconnects with CLECs, not *where* the interconnection occurs.

Section 251(c)(2) includes four separate criteria, *all* of which apply to the interconnection ILECs are required to offer under section 251(c), and each of which addresses a different aspect of the interconnection relationship. These criteria include that interconnection must be provided by the ILEC: (A) for transmission and routing of telephone exchange services and exchange access; (B) at any technically feasible point within the ILEC’s network; (C) at least equal in

quality to that provided by the ILEC to itself or others; and (D) on just, reasonable and nondiscriminatory rates, terms and conditions. Where a requesting carrier seeks interconnection of its facilities with the ILEC's network, the ILEC must comply with *each* subsection of section 251(c)(2).

The "equal-in-quality" subsection (C) appears right after the subsection requiring interconnection within the ILEC's network (B). Subsections 251(c)(2)(B) and 251(c)(2)(C) are, likewise, implemented through two discrete FCC rule provisions, again one after the other. The equal-in-quality requirement is implemented through FCC Rule 51.305(a)(3), right after section 51.305(a)(2), which requires the POI to be "within the incumbent LEC's network." Rule 51.305(a)(3) makes clear that the equal-in-quality rule addresses service *quality*, not POI placement. It requires "an incumbent LEC to design interconnection facilities to meet the same *technical criteria* and *service standards* that are used within the incumbent LEC's network." 47 C.F.R. § 51.305(a)(3) (emphasis added).

The FCC's *Local Competition Order*, where the FCC adopted Rules 51.305(a)(2) and (a)(3), further confirms that the Act's equal-in-quality interconnection requirement is distinct from its requirement for the POI to be on the ILEC's network. The latter requirement is discussed within the "Technically Feasible Points of Interconnection" portion of the Order, where the FCC states that "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network."¹² The equal-in-quality requirement is discussed later, in the "Interconnection that is Equal in Quality" portion of the Order. Here, the FCC makes clear that section 251(c)(2)(C) of the Act "requires incumbent LECs to design interconnection facilities to meet the same technical criteria

¹² *Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ("Local Competition Order"), ¶ 209 (1996).

and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks.” The FCC also mentions conditions relating to “pricing and ordering of services” as examples of items within the equal-in-quality criterion. *Local Competition Order*, ¶ 224.

There is, therefore, no doubt that the equal-in-quality criterion in section 251(c)(2)(C) of the Act and FCC rule 51.305(a)(3) addresses a different subject--that is, service quality and technical design criteria--from the POI placement directive in section 251(c)(2)(B) and FCC rule 51.305(a)(2). This fact was readily apparent to the West Virginia Arbitrator: “The subsection on which Intrado has hung so much of its argument doesn’t even apply to the location of the point of interconnection.” *W.V. Arb. Award* at 13.

Because they address distinct subjects, it would be impossible for Verizon to rely on section 251(c)(2)(B) to “obliterate” its obligations under 251(c)(2)(C), as Mr. Hicks accuses Verizon of doing. (Intrado Ex. 1 at 19.) This is why Intrado’s arguments are “ludicrous on their face.” As the West Virginia Arbitrator stated: “On the one hand, Intrado argues that Verizon cannot use an obligation under Section 251(c) to ‘obliterate’ another obligation under Section 251(c). That is certainly true enough. However, Intrado’s own argument would require exactly that outcome.” *W.V. Award* at 13.

Indeed, subsections (B) and (C) appear one after another in the *very same statute*—meaning that Congress *has already decided* that there is no conflict between requiring interconnection on the ILEC’s network and the equal-in-quality requirement; both requirements must be applied. State Commissions are not free to read 251(c)(2)(B) out of the Act and to find that section 251(c)(2)(C) means just the *opposite* of what section 251(c)(2)(B) requires--that is, the POI within the ILEC’s network. Intrado’s advancement of this bizarre statutory construction

shows its desperation to come up with some kind of legal argument, no matter how frivolous, to support its extreme network architecture proposals.

Even if there were any merit to Intrado's legal argument that the "equal-in-quality" requirement cancels the POI location requirement (and there is not), that argument would still fail because it is based on Intrado's incorrect factual premise that Verizon is denying Intrado interconnection arrangements Verizon provides to other CLECs, other ILECs, or itself. As Verizon's witnesses testified, the section 251(c) "interconnection" arrangements Intrado seeks--POIs on its own network, direct trunking from the ILEC's end offices, and a new form of call routing from end offices--have never been implemented in any interconnection agreement. (Verizon Ex. 1 at 27.)

Intrado's argument that it is only asking for the same kind of arrangements Verizon uses with CLECs (Intrado Petition at 22; Intrado Ex. 1 at 13) seems to be that since CLECs bring their traffic to Verizon, it is only fair for Verizon to take its traffic to Intrado. But this *policy* argument rests on Intrado's incorrect *legal* position that it is entitled to establish POIs on its own network. CLECs bring their traffic to Verizon's network because the Act and the FCC's rules require it. The Act prescribes no different interconnection rules for 911 traffic than for other traffic and the Department cannot create any such different, more favorable rules based on Intrado's misguided policy arguments. (Verizon Ex. 1 at 29-30.) As the West Virginia Arbitrator correctly observed: "Section 251 makes no distinction between interconnection for POTS [plain old telephone service] and interconnection for more specialized services. The same requirements and rules apply to all types of interconnection." *W.V. Award* at 13.

In any event, Verizon's "template 251(c) interconnection agreement" does not (and, as a template, cannot) "require" or "mandate" that CLECs interconnect at Verizon's selective routers,

as Intrado repeatedly contends (Intrado Ex. 1 at 34-35; Tr. 40); in negotiations over that template agreement, CLECs nevertheless typically opt for this arrangement, because it is efficient for them to have Verizon route their 911 calls, and they may be interconnected at Verizon's selective routers for purposes in addition to interconnecting for 911 traffic. (*See* Tr. 42).

Nor do Verizon's arrangements for exchanging 911 traffic with adjacent ILECs support Intrado's extreme network architecture proposals, as Intrado also contends. In its ILEC-to-ILEC arrangements, Verizon typically provides facilities to a meet point at its service area boundary and the other ILEC provides the facilities in its service territory. These meet-point interconnection arrangements do not involve Verizon building facilities and transporting traffic to points on another carrier's network or outside Verizon's service area, as Intrado's proposal would. Moreover, because the facilities Verizon constructs carry all sorts of traffic (not just 911 calls) between Verizon and the adjacent ILEC, the costs and administrative burdens associated with the facilities are not restricted to 911 calls but are spread over the many different types of traffic Verizon exchanges with the adjacent ILEC. And ILEC-to-ILEC arrangements provide switched and special access revenues that help to cover the costs of those arrangements. Under Intrado's proposal, though, Verizon would be required to establish facilities over potentially very long distances and that would be dedicated only to 911 calls for which Verizon collects no revenue. (VZ Ex. 1 at 28-29.)

In addition, the arrangements Verizon has with adjacent ILECs for the exchange of 911 traffic are generally not section 251 interconnection agreements, which is what Intrado seeks here. Therefore, such arrangements could not guide the Department's resolution of the parties' disputes about their rights and obligations under section 251(c). (VZ Ex. 1 at 28.) Having

chosen to seek interconnection through section 251(c), Intrado cannot claim entitlement to arrangements Verizon is not required to offer under section 251(c).

In any event, Verizon offered Intrado meet-point interconnection arrangements, as it does to CLECs, on terms and conditions consistent with the FCC's requirements for section 251(c) agreements. But Intrado expressed no interest in this interconnection method, so the meet-point language was removed from the draft agreement. (VZ Ex. 1 at 29.) Verizon, however, remains willing to provide meet-point interconnection arrangements to Intrado on the same terms it provides such arrangements to CLECs.

For all these reasons, Intrado's claim that it is seeking interconnection like Verizon has with other carriers is wrong as a matter of fact--and Verizon cannot, in any event, be forced to interconnect on Intrado's network as a matter of law.

C. Section 253(b) of the Act Does Not Authorize the Department to Adopt Intrado's Extreme Interconnection Arrangements

Aside from Intrado's erroneous section 251(c)(2)(C) argument, Mr. Currier claims that Section 253(b) of the Act permits the Department to base its decision here on "public interest considerations." (Intrado Ex. 2 at 18.) This argument is no more credible than Intrado's recommendation to read section 251(c)(2)(B) out of the Act. Section 253, entitled "Removal of Barriers to Entry," is completely separate from the interconnection requirements in section 251 and the interconnection agreement negotiation and arbitration procedures in section 252. Section 253(a) ("In General") states that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide an interstate or intrastate telecommunications service."

Section 253(b) (“State Regulatory Authority”), upon which Intrado relies for its proposals, states:

STATE REGULATORY AUTHORITY.-Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [“Universal Service”], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Nothing in this provision supports, let alone necessitates the adoption of Intrado’s proposal. Intrado is, once again, engaging in its own, peculiar brand of statutory interpretation.

First, this is a section 252 arbitration to implement the section 251(c) interconnection requirements. Section 253 doesn’t impose any interconnection requirements, so there is nothing in section 253(b) to implement through a section 252 arbitration. Section 253(b) is, rather, a “safe harbor” reserving to the states their existing regulatory authority over certain matters, despite 253(a)’s prohibition on state requirements precluding any entity from providing telecommunications services.¹³ Nothing in section 253(b)’s general reservation of rights speaks to, let alone overrides, the specific interconnection requirements in section 251(c)(2), including the requirement for the POI to be within the ILEC’s network. Section 253(b)’s general reference to protection of the public safety and welfare certainly does not authorize state commissions to ignore unambiguous directives in the Act and the FCC rules, as Intrado urges.

Second, even if section 253 were relevant to resolving the parties’ rights and duties under section 251(c) (and it is not), the Department could not assume that Intrado’s proposals will protect the public safety and welfare and the rights of consumers, as Intrado’s legal argument necessarily presumes. As detailed in response to Issue 5, Intrado’s proposals are more likely to undermine than promote public safety. Among other things, Intrado cannot assure the

¹³ See, e.g., *BellSouth Telecomms., Inc. v Town of Palm Beach*, 252 F.3d 1169, 1188 (11 Cir. 2001).

Department that CLECs' and wireless carriers' calls will get to Intrado-served PSAPs or that anyone can develop a reliable call routing alternative to the selective routing used today.

Intrado's allegations that its POI-on-its-own-network proposal is "consistent with industry recommendations" relating to network reliability (Intrado Ex. 1 at 18-19) are unfounded. Intrado's claims about its planned network's reliability are necessarily speculative, because Intrado hasn't built that network anywhere. Indeed, Intrado's Mr. Hicks advised the Arbitrator to "keep in mind that we have not placed live traffic on our system as yet anywhere in the country." Intrado is, instead, in the equipment testing stage and is only "preparing to conduct" field trials. (Tr. at 11-12.) The degree of reliability of Intrado's services once its network is built will depend, in large part, on its network architecture, which is the principal issue to be resolved in this arbitration. As Verizon explains in more detail under Issue 5, the network architecture Intrado proposes--not just for Verizon, but for all carriers—is more likely to undermine than enhance reliability of 911 services.

Most importantly, though, nothing in any 911 industry guidelines addresses *section 251(c) interconnection requirements*, which are the only requirements to be implemented in this section 252 arbitration. Intrado's speculation about the merits of its planned services and network are not relevant to determining Verizon's section 251(c) interconnection obligations. (VZ Ex. 1 at 30.)

As for Intrado's claimed objective of safeguarding the rights of consumers, Intrado doesn't say what consumers or what rights its proposal is supposed to protect. Certainly, it is not in the interest of Verizon's or other carriers' customers who would be forced to pay for Intrado's new network (on top of any 911 surcharges they already pay, and that are turned over to the State 911 Department (Tr. 141)) if the Department adopts Intrado's network architecture proposals.

D. There Are No “Other Sources” Authorizing the Department to Ignore the Requirement for the POI to Be on Verizon’s Network

Intrado asserts that Sections 251(e) and 706 of the Act authorize the Department to adopt Intrado’s network architecture proposal (Intrado Ex. 2 at 18-19) and claims additional support for that proposal in an alleged FCC determination “that the cost-allocation point for the exchange of 911/E-911 traffic should be at the selective router” (Intrado Ex. 2 at 17). None of these “sources” has anything to do with placement of the POI, let alone provides any authority for the Department to adopt Intrado’s proposal to place POIs on its own network. Section 251(e) addresses FCC authority over numbering administration; section 706 addresses broadband deployment and instructs the FCC to conduct a rulemaking into broadband availability; and the FCC never made any ruling about the POI for 911 traffic. With respect to this latter claim, Mr. Currier provided no citation to any FCC decision in his prefiled testimony, but promised additional discussion of the FCC’s findings in Intrado’s legal briefs. (Intrado Ex. 2 at 17.) Verizon looks forward to rebutting that discussion.

E. Issue 1 Is Not a Policy Issue

Although Intrado petitioned for interconnection under section 251(c)—which obviously requires the application of section 251(c) requirements—Intrado’s witnesses suggest that “public interest considerations” should dictate the resolution of Issue 1. (*See, e.g.*, Intrado Ex. 2 at 17). The Department cannot ignore governing federal law and instead decide the issue with respect to POI placement on policy grounds. (VZ Ex. 1 at 10, 30.) That law, as explained above, provides that the POI(s) must be on Verizon’s network, not Intrado’s.

Intrado’s position is that shifting its costs to other carriers and their customers is desirable policy because Intrado, at least in Intrado’s view, will provide superior emergency services. As

Verizon has pointed out, it is not the Department's job to evaluate the relative merits of Verizon's 911 services and Intrado's 911 services, so all of Intrado's testimony in this regard is irrelevant to any issue in this arbitration, which must be resolved in accordance with federal law. (Tr. 130.) There is no sliding scale of ILEC interconnection obligations under section 251(c) depending on what services a requesting carrier claims it will provide, and the Department cannot modify the law based on a determination that Intrado will provide better 911 service than Verizon or other potential providers.

Nor could the Department make any such determination, because Intrado is not providing any 911 services at this point, here or anywhere else. There is no assurance that Intrado will actually provide *any* 911 services, let alone implement the capabilities it says it will.

Although a comparison of Intrado's planned 911 services and Verizon's 911 services is not relevant to determining Verizon's interconnection obligations to Intrado, Verizon emphasizes that nothing in the record suggests any problem with Verizon's 911 services, and there is nothing to indicate that public safety needs won't be met unless Intrado enters the market. (VZ Ex. 1 at 19.) On the contrary, as the State 911 Department has explained: "Our program is considered one of the best in the country because of its coordinated approach and the redundancy and diversity required of our service provider, Verizon New England. All dispatchers and call-takers that answer Enhanced 9-1-1 calls are required to be certified through the SETB's [Statewide Emergency Telecommunications Board's] training program."¹⁴ The 911 Department has worked with Verizon and VoIP service providers serving Massachusetts to integrate new technologies into the E911 system, and VoIP providers must go through a testing process with the 911 Department to ensure the calls are delivered with complete and accurate information. (*Id.*) The

¹⁴ VZ Ex. 1 at 19, *citing* <http://www.mass.gov/?pageID=eopsagencylanding&L=3&L0=Home&L1=Public+Safety+Agencies&L2=State+911+Department&sid=Eeops>

911 Department's observations are, therefore, at odds with Mr. Currier's speculation that existing 911 systems will "progressively decline in their ability to keep pace with" changes in technology and customer demand. (Intrado Ex. 2 at 11.) And despite his comments about the inability of existing 911 providers to meet evolving 911 needs, Mr. Currier at the same time recognizes that the existing 911 system is not, in fact, inadequate. (Intrado Ex. 2 at 12.)

It is clear, however, that Intrado's vaguely defined network architecture does raise serious concerns about the adequacy of its security and reliability. Among the "public interest considerations" the Florida Commission cited when it dismissed Intrado's arbitration petitions was that "carriers could potentially be transporting 911/E911 emergency calls up and down the state over great distances, perhaps even out of state." (*Fla. AT&T/Intrado Order*, at 8; *Fla. Embarq/Intrado Order*, at 7.) And Intrado's proposal presents an obvious danger of dropped 911 calls. As detailed in conjunction with Issue 5, Intrado's proposal would prohibit Verizon from using its selective routers to sort other carriers' calls to PSAPs. Those carriers would have to build their own direct trunks to Intrado and implement their own call sorting capability, just as Intrado seeks to compel Verizon to do. But Intrado cannot answer the question of how it plans to force other carriers to do so. In the absence of such direct trunking agreements with those other carriers, it appears that these carriers' calls would not reach Intrado-served PSAPs. (VZ Ex. 1 at 43, 52.)

Even if the Department could ignore the governing law and the security and reliability risks Intrado's proposal presents, it could not find that it would not be in the public interest to force Verizon and other carriers to bear the costs of implementing Intrado's business plan, as that plan is designed to do. It is indisputable that fair and efficient competition cannot develop if carriers are forced to bear their competitors' costs. (VZ Ex. 1 at 20, 57), and the Department has

never articulated any such anticompetitive, anti-consumer policy. Intrado's proposal may be the most "efficient and effective" for Intrado (Petition at 16; Intrado Ex. 1 at 13), but it is grossly inefficient and expensive for Verizon and other carriers. (VZ Ex. 1 at 30.)

It is also at odds with Verizon's 911 tariff. When Verizon serves a PSAP, it must charge its tariffed rates for elements provided to the PSAP. But Intrado's plan would appear to excuse PSAPs from paying for these same 911-related elements, even though Verizon would still perform them—thus allowing Intrado to price its service more attractively and gain an unfair competitive advantage. (VZ Ex. 1 at 14.)

Even if Intrado's proposal to force Verizon and all other carriers into a new network architecture were supported by any law (and it is not), it would have to be rejected on policy grounds. Verizon's interconnection proposal will permit Intrado to provide all of its planned services to PSAPs that want to take them, but without any of the harmful policy consequences of Intrado's proposal.

ISSUE 2: WHETHER THE PARTIES SHOULD IMPLEMENT INTER-SELECTIVE ROUTER TRUNKING AND WHAT TERMS AND CONDITIONS SHOULD GOVERN THE EXCHANGE OF 911/E911 CALLS BETWEEN THE PARTIES? (911 Att. § 1.4; Glossary §§ 2.6, 2.63, 2.64, 2.67, 2.94, and 2.95.)

Sometimes, a 911/E-911 Call may be directed to the wrong PSAP. This may occur, for example, in the case of a wireless call because of a lack of identification of the caller's exact location. In the case of a misdirected 911 call, the PSAP that received the call may wish to transfer the call to the correct PSAP. Verizon does not disagree with Intrado that inter-selective router trunking permits PSAPs to communicate with each other to allow misdirected calls to be efficiently routed to the appropriate PSAP. (VZ Ex. 1 at 32; Intrado Ex. 1 at 23.) (In fact, it is Verizon's position that the interconnection between Verizon and Intrado for *all* 911 calls should

be by means of trunking between selective routers. (VZ Ex. 1 at 33.) However, Intrado's specific inter-selective routing proposal is unacceptable for a number of reasons.

First, call transfer routing capability between PSAPs doesn't even involve interconnection with the public switched telephone network, so inter-selective routing terms are not subject to section 251(c) of the Act, as the Ohio Commission found. *Ohio Intrado/Embarq Order* at 8.

Second, Intrado's inter-selective-router trunking proposal assumes that Intrado may force Verizon to deliver 911 calls being transferred from a Verizon-served PSAP to an Intrado-served PSAP *at a POI on Intrado's network*. As Verizon explained under Issue 1, Verizon cannot lawfully be forced to interconnect within Intrado's network, so the Department must reject Intrado's proposal for Issue 2, just as it did for Issue 1. (VZ Ex. 1 at 33.)

Third, because Intrado proposes to designate POIs on its own network when it serves a PSAP in a particular area, and to require Verizon to deliver to these POIs calls being transferred from Verizon-served PSAPs to this Intrado-served PSAP, it follows that all of the inter-selective router trunking between Verizon's selective routers and Intrado's selective routers to deliver calls from Verizon-served PSAPs to Intrado-served PSAPs would be on Verizon's side of the POI in this scenario. Therefore, under Intrado's proposal, Verizon would have to pay for the trunking between Verizon's and Intrado's selective routers to deliver calls from Verizon-served PSAPs to Intrado-served PSAPs,, as well as any other activities necessary to implement Intrado's particular method for selective router-to-selective router transfers. (These obligations would be in addition to Intrado's proposal for Issue 5 to make Verizon pay for direct trunks from Verizon's end offices to Intrado.) Intrado's proposal is, therefore, inequitable and

anticompetitive (as well as unlawful). Intrado is once again seeking to make Verizon pay to implement new capabilities that Intrado can then market to PSAPs. (VZ Ex. 1 at 33-34.)

Fourth, the PSAPs served by Verizon and Intrado must *agree* to transfer misdirected 911 calls between them before such transfers can occur. Intrado argues that “[t]he interoperability currently available on a limited basis to ILECs providing 911/E911 services must be made available to Intrado Comm when it offers a competing 911/E911 service product.” (Intrado Ex. 1 at 24.) It is not clear what Intrado means, but to the extent it is saying that PSAPs should have the same arrangements that they do today to transfer calls between one ILEC-served PSAP and another, that is not a matter for Verizon’s and Intrado’s interconnection agreement. The agreement between Verizon and Intrado cannot impose upon PSAPs specific interoperability provisions without their consent, as Intrado seeks to do. Verizon does not seek to dictate to PSAPs call transfer arrangements, but rather, where PSAPs have agreed to transfer calls between themselves, Verizon will work with Intrado to establish arrangements for these transfers. But the interconnection agreement cannot purport to control third parties’ conduct or the services that can be sold to them. (VZ Ex. 1 at 35.)

Fifth, Intrado’s proposed language specifying particular activities to be undertaken by the parties to support Intrado’s proposed call transfer methodology would require the parties to maintain inter-911-selective router dial plans. (911 Att., Intrado’s proposed § 1.4.4.) Verizon agrees that current dial plans are necessary to ensure proper transfers of calls between companies’ selective routers, and Verizon is willing to provide this information to Intrado just as it does to other providers. But there is no need for an interconnection agreement provision expressly imposing a requirement that the parties maintain inter-911-selective router dial plans. Rather, establishing these dial plans can be left, like many other network arrangements the

parties will need to establish to connect their networks, to industry practice and the implementation efforts ordinarily undertaken by interconnecting carriers. (VZ Ex. 1 at 35.)

ISSUE 3: WHETHER FORECASTING PROVISIONS SHOULD BE RECIPROCAL.
(911 Att. § 1.6.)

The disputed language for this issue addresses forecasting of trunks for traffic exchanged between the parties' networks. Verizon's language for section 1.6.2 of the 911 Attachment requires Intrado to provide a semi-annual forecast of the number of trunks Verizon will need to provide for the exchange of traffic with Intrado. Intrado proposes to make this language reciprocal, so that Verizon would need to provide forecasts of the number of trunks Intrado would need to provide for the exchange of traffic with Verizon. Intrado's revision serves no useful purpose and would impose an unnecessary burden on Verizon. (VZ Ex. 1 at 36-37.)

Intrado suggests that there will be a "mutual exchange of traffic" between Intrado and Verizon, so trunk forecasting requirements should apply equally to both parties. This argument is misleading, because Intrado does not plan to provide service to any end users that would make emergency (or other) calls; there will be no calls originating from Intrado's PSAP customers to Verizon. And Intrado, not Verizon, will be in the best position to forecast the number of trunks necessary for traffic from Verizon to Intrado. These trunking needs will depend on Intrado's success in the market, which Verizon cannot predict, and Intrado will be able to track the volume of traffic passing through its network to the PSAP. In addition, Intrado's PSAP customers will have the best knowledge of call volumes from Verizon's serving area to the PSAPs. (*Id.* at 37.) As the West Virginia Commission concluded in rejecting Intrado's reciprocal forecasting proposal, Intrado-served PSAPs, which have a business relationship with Intrado, will be better

positioned than Verizon to assess call volumes to them (*W.V. Arb. Order*, at 3-4), so there is no reason to place this burden on Verizon.

In any event, to the extent Intrado has a legitimate need for forecasts, that need will be fully met through the agreed-upon language in 911 Attachment section 1.5.5, which states:

Upon request by either Party, the Parties shall meet to: (a) review traffic and usage data on trunk groups; and (b) determine whether the Parties should establish new trunk groups, augment existing trunk groups, or disconnect existing trunks.

This language, which requires Intrado and Verizon to cooperate in updating arrangements for traffic exchange, will assure that Intrado receives the type and quantity of information it needs to assure adequate trunking between the parties' networks. (VZ Ex. 1 at 37.) Indeed, at the hearing, Mr. Hicks recognized that the meetings contemplated by the agreed-upon section 1.5.5 would allow the parties to share call blockage and other such information useful for determining trunking requirements. (Tr. 9.) The Department should thus reject Intrado's proposed, unnecessary forecasting language in section 1.6 of the 911 Attachment.

ISSUE 4: WHAT TERMS AND CONDITIONS SHOULD GOVERN HOW THE PARTIES WILL INITIATE INTERCONNECTION? (911 Att. § 1.5)

This issue is related to Issue 1, whether Verizon can be forced to interconnect with Intrado at POIs on Intrado's network. Verizon's proposed section 1.5 of the 911 Attachment correctly recognizes that interconnection will occur on Verizon's network, and that certain steps need to be taken to initiate service at the POI(s) on Verizon's network. Intrado's competing language, however, assumes that Intrado may require as many POIs on its network as it wishes and that Verizon will provide Intrado information about those interconnection arrangements; and, further, that there will be a need, each time Intrado signs up a new PSAP customer, for Verizon to establish new direct trunks from Verizon's end offices to a POI on Intrado's network

(*see* Issue 5 below). Because Intrado's language for section 1.5 reflects the erroneous notion that Verizon must interconnect with Intrado on Intrado's network, it must be rejected. (VZ Ex. 1 at 39.)

When Intrado interconnects with Verizon on Verizon's network (as it must) and Verizon routes its end users' 911 calls to Intrado through Verizon's 911 selective routers (*see* Issue 5 below), then, while Intrado will have the right to interconnect at as many technically feasible points on Verizon's network as Intrado wishes (either when interconnection is initially established in a LATA or at a later time), as a practical matter Intrado will only need to interconnect to Verizon's network at the offices where Verizon's 911 selective routers are. These interconnections would probably be established by Intrado when it initially interconnects with Verizon. Thereafter, changes to these interconnection arrangements would be managed under 911 Attachment section 1.5.5. If Intrado for some reason needs additional interconnection arrangements in a LATA, it can order them from Verizon pursuant to Verizon's generally established business practices for CLEC interconnection. Therefore, Intrado's language on this point is unnecessary. (VZ Ex. 1 at 39.)

The Department should adopt Verizon's proposed language in §§ 1.5.1, 1.5.2, 1.5.3 and 1.5.4 of the 911 Attachment, which correctly describes how Intrado can initiate interconnection at technically feasible POIs on Verizon's network.

ISSUE 5: HOW SHOULD THE PARTIES ROUTE 911/E911 CALLS TO EACH OTHER?
(911 Att., §§ 1.3, 1.4, 1.7.3.)

Intrado has not only proposed for Verizon to take its end users' 911 traffic to multiple, distant POIs on Intrado's network (*see* Issue 1), but would also dictate how Verizon sorts it and gets it to those POIs. Specifically, Intrado would (1) require Verizon to establish, at Verizon's

expense, at least two new direct trunks from each of Verizon's end offices in areas where Intrado serves the PSAP, and (2) force Verizon to bypass its own selective routers and to develop, again at Verizon's expense, an entirely new call-sorting mechanism. (*See* Verizon Ex. 1 at 40-41; 911 Attachment, Intrado's proposed § 1.34(ii).) Intrado has not supported and cannot support this unlawful and anticompetitive proposal. Even if the Department, contrary to law, forces Verizon to interconnect at a POI on Intrado's network, Intrado has no right to dictate how Verizon gets its 911 traffic to that point—let alone to make Verizon pay for Intrado's proposed configuration.

A. Intrado Has No Right to Dictate How Verizon Engineers Its Own Network

Intrado's proposal would require Verizon to buy or build a minimum of two additional direct trunks¹⁵ from affected Verizon end offices (Verizon has 270 end offices, Tr. 41) where Intrado is designated as the 911/E911 service provider for an area containing Verizon end users to an unspecified number of POIs on Intrado's network. (VZ Ex. 1 at 40-41.) As discussed under Issue 1, Intrado's proposed contract language places no constraints on the number of POIs it may designate on its network or their distance from Verizon's network. Intrado's ill-defined proposal, therefore, gives it complete discretion to impose unlimited and unknowable transport costs upon Verizon. (VZ Ex. 1 at 43.)

If, contrary to law, the Department directs Verizon to place a POI (or POIs) on Intrado's network, then the transport facilities needed to get 911 calls to that POI will be on Verizon's side of the POI. It is, therefore, untrue that Intrado's proposal will not dictate how Verizon routes traffic on Verizon's side of the POI, as Mr. Hicks contends (Intrado Ex. 1 at 36)—just after his

¹⁵ Mr. Hicks suggests that Verizon may be able to use its existing direct trunks from Verizon's end offices to Verizon's selective routers to satisfy Intrado's proposed direct trunking requirement (Intrado Ex. 1 at 43), but that statement would make sense only if Intrado's POIs were at Verizon's selective routers—which is Verizon's proposal, not Intrado's.

discussion of Intrado's language that would require Verizon to "implement certain minimum arrangements for routing 911/E-911 service traffic destined for Intrado Comm's PSAP customers," including "providing the requisite number of dedicated, diversely routed 911/E-911 trunks, engineering the 911/E-911 trunks pursuant to industry recommended grades of service, monitoring 911/E-911 trunk volumes, and coordinating testing and maintenance activities for 911/E-911 trunks between the Parties' networks." (Intrado Ex. 1 at 33.) These requirements obviously *would* dictate how Verizon engineers its own network on its own side of the POI. There is no basis in law, policy, or equity to support the notion that Intrado may tell Verizon how to configure Verizon's own network and that Verizon must bear the costs of whatever configuration eventually Intrado decides upon.

Indeed, Intrado openly admits that Verizon and other carriers would pay for implementation of Intrado's proposed new network architecture (Intrado Ex. 2 at 21)—although it doesn't recognize the magnitude of those costs or the fact that they would not just be "initial," but ongoing. Intrado contends that this cost-shifting is only fair, however, because incumbent wireless carriers have tariffs "that allow them to recover costs associated with their end users' access to 911/E-911 services," and Intrado lacks such tariffs. (Intrado Ex. 2 at 21.) In other words, Intrado doesn't provide any telephone service to end users, so Verizon should raise its end users' rates to subsidize Intrado's operations. This result would be patently anticompetitive and unfair to Verizon's customers, who should not be made to suffer because Intrado has chosen not to provide local dial-tone service to anyone. Intrado has its own tariff under which it will provide its 911 services to its own customers, the PSAPs. Intrado must look to those customers to cover the costs of providing services to them; if Intrado cannot operate without subsidization

by the customers of Verizon and other carries, then Intrado should not be in business. (VZ Ex. 1 at 56-58.)

The only two Commissions that have ruled on Intrado's direct trunking proposal—Ohio and West Virginia--have rejected it. The West Virginia Arbitrator ruled that “Intrado's proposals for direct trunking, line attribute routing and the elimination of the use of Verizon's selective routers are all rejected, since, with the establishment of the point of interconnection on Verizon's network, those requests by Intrado intrude upon Verizon's right to engineer its own system in the manner that it deems best.” *W.V. Award*, at 20; *W.V. Order*, at 3 (“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.”).

In Intrado's arbitrations with Embarq and Cincinnati Bell, the Ohio Commission found that there was no law to support Intrado's direct trunking proposal. *Ohio Embarq/Intrado Order* at 33; *Ohio CBT/Intrado Order* at 14-15. It confirmed that nothing would justify one carrier dictating to another how it transports traffic *within its own network*. (See, e.g., *Ohio CBT/Intrado Order*, at 14 (a carrier is “entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection”); *Ohio Embarq/Intrado Order*, at 33 (“Embarq is responsible for routing its end users' 9-1-1 calls on its side of the POI”).) The Commission pointed to “conflicting evidence concerning the reliability and expense of implementing” Intrado's direct trunking proposal as additional reasons for rejecting it in both arbitrations. (*Ohio Embarq/Intrado Order*, at 33; *Ohio CBT/Intrado Order*, at 15.)

Verizon, not Intrado, has the right to decide how to configure its own network, so the Department must reject Intrado's direct trunking proposal, which would transfer that right to Intrado. In addition, as the FCC has repeatedly stated, the requesting carrier is responsible for the costs of interconnection and must pay the ILEC for any expensive form of interconnection it requests.¹⁶ So even if section 251(c) did require Verizon to implement Intrado's network architecture proposal (and it does not), Intrado would have to pay the substantial costs that Verizon would incur to implement these proposals. If Intrado wants redundant direct trunks from Verizon's end offices to POIs on Intrado's network, then Intrado must pay for them.

B. Intrado Cannot Force Its Network Architecture Proposal on Other Carriers

Intrado's proposal would give it *carte blanche* to impose its network costs not only on Verizon, but on every carrier that sends 911 calls to Intrado-served PSAPs. (VZ Ex. 1 at 43.) Today, most CLECs and wireless carriers connect through Verizon's selective routers to route their calls to the appropriate PSAP. Under Intrado's proposal, Verizon could not send any traffic—its own or other carriers'—through its selective routers to PSAPs served by Intrado. Only Verizon's calls would flow over the direct trunks from Verizon's end offices to Intrado's POIs under Intrado's plan. So other carriers would have to implement the same direct trunking/end-office call-sorting arrangements Intrado demands of Verizon here. (VZ Ex. 1 at 44-45.) *Intrado's direct trunking/end-office call-sorting plan will not work unless Intrado can force these new arrangements on all other carriers.*

Mr. Hicks denies that Intrado's direct trunking proposal will "impact other telecommunications carriers in Massachusetts," but in the next breath, he states that "Intrado

¹⁶ *Local Competition Order*, *supra*, at ¶¶ 199, 200, 209, 225, 552.

Comm intends to enter into direct interconnection arrangements with all CLECs and wireless carriers needing to send 911 calls to Intrado Comm's PSAP customers" (Intrado Ex. 1 at 46). Obviously, requiring CLECs and wireless carriers to establish new direct trunks to any points on Intrado's network Intrado wishes and forbidding them to aggregate calls at Verizon's selective routers would affect those carriers. (VZ Ex. 1 at 44-45.) Intrado can cite no law that entitles it to force these carriers to lease or build their own facilities to directly connect on Intrado's network. Mr. Hicks dismisses this concern by speculating that Intrado's proposal is "expected to be received favorably" by other carriers. (Intrado Ex. 1 at 46.) On the contrary, it is much more likely that these other carriers would receive very *unfavorably* Intrado's plan to increase their costs by forcing them to establish new direct trunks to POIs at Intrado's network, no matter how far away those POIs may be from an individual carrier's network. (VZ Ex. 1 at 44.)

Intrado's proposal would, moreover, interfere with other carriers' ability to utilize existing arrangements that Verizon provides to them under their interconnection agreements, and that Verizon is required to provide under section 271(c)(2)(B)(vii)(I) of the Act. That section requires Verizon to provide other carriers nondiscriminatory access to 911 services--which, as noted, is provided today in most cases through Verizon's selective routers. Intrado's proposal would remove this option for these carriers, disrupt Verizon's agreements reflecting this option, and thus compromise Verizon's ability to meet its obligation to provide nondiscriminatory access to 911 services. (VZ Ex. 1 at 44-45.)

C. Intrado's Proposal Is Vague, Risky, and Unworkable

As Verizon has explained, its end offices cannot sort 911 calls. Call-sorting capability resides instead in Verizon's selective routers. As a result, for Intrado's direct end-office trunking proposal to work in an environment of competing 911 providers, some kind of new call-sorting method would have to be deployed in those end offices in order for calls to be sorted to the right

PSAP. (Verizon Ex. 1, at 31, 41-43.) Intrado recognizes this fact, and in other state arbitrations before this one, Intrado asked commissions to deploy what Intrado calls “line attribute routing” to get calls to Intrado-served PSAPs. (VZ Ex. 1 at 46.)

Intrado’s line attribute routing proposal was substantially the same as an obsolete, manual process known in the industry as “class marking.” (VZ Ex. 1 at 38-39.) Because line attribute routing was just a concept created by Intrado, rather than an actual call routing method in use anywhere, it raised serious concerns from 911 entities and commissions.¹⁷

In the wake of these criticisms, it appears that Intrado has stopped defending line attribute routing; its testimony did not even mention it—but neither did it offer any other call routing alternative. This tack only exacerbates the concerns raised about Intrado’s call routing plans. Whether Intrado proposes line attribute routing or nothing at all for call routing along with its direct trunking proposal, there is no existing call-sorting alternative to selective routing--and without a call sorting method to implement its direct trunking arrangement, Intrado is making only half a call routing proposal. (VZ Ex. 1 at 47-48, 54) Intrado offers no opinion as to how long it might take to implement some alternative call sorting concept or how much it would cost. Intrado simply proposes to leave it up to Verizon to devise, deploy, and pay for this new mechanism. (Intrado Ex. 1 at 38-39.)

Contrary to Intrado’s arguments (Intrado Ex. 2 at 39-41) Intrado’s direct trunking/new call sorting—and in particular, its proposal to preclude use of Verizon’s selective routers--is not

¹⁷ See VZ Ex. 1 at 46-47, citing *Ohio Embarq/Intrado Award*, at 33; *Ohio CBT/Intrado Award*, at 15; *Petition of Intrado, Inc. for Arb. Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Verizon Southwest*, Unopposed Joint Motion of the Tex. Comm’n on State Emergency Comm., the Texas 9-1-1 Alliance, and the Municipal Emergency Comm. Districts Ass’n for Leave to File a Statement of Position, at 1-2 (Oct. 17, 2008) (attached as Ex. 9 to VZ Ex. 1); Letter from R. Hoge, Sec’y, W.V. Enhanced 9-1-1 Council, to S. Squire, Exec. Sec’y, W.V. Pub. Serv. Comm’n (Nov. 7, 2008) (attached as Ex. 10 to VZ Ex. 1).

necessary for any legitimate reason, including reliability of the 911 network or efficiency. As Verizon has testified, using selective routers is efficient because it allows a company to aggregate and route calls to multiple PSAPs through a single switch. Conversely, it is not efficient for call carriers to build multiple trunks from multiple end offices to multiple selective routers, as Intrado proposes. (VZ Ex. 1 at 50-51.) As Verizon witnesses testified, the industry standard, reflected in National Emergency Number Association publications, is to concentrate trunks from end offices at a 911 tandem or selective router from which a single trunk group serves the PSAP. This most-efficient configuration is used throughout the country and has proven to have extraordinary reliability. (VZ Ex. 1 at 50-51.) The Department can give no credence to Intrado's claim that continued use of Verizon's industry-standard selective routers will increase the risk of call failure (Intrado Ex. 1 at 40) compared to Intrado's direct trunk/unidentified call-sorting alternative, when such alternative has not even been identified by Intrado, let alone developed or ever used.

Intrado's untested proposals will undermine, not enhance, network reliability—not only because of the lack of any identified routing alternative to selective routing, but because all carriers whose customers call 911 would need to buy into Intrado's network configuration plan for it to offer any level of reliability. Unless carriers that interconnect with Verizon today establish direct connections to Intrado's network, they will need to continue to route their calls to Intrado-served PSAPs through a Verizon selective router. Intrado claims that Verizon's selective routing is unnecessary (Intrado Ex. 1 at 39), but it would only be potentially unnecessary for a particular Verizon end office if all of the PSAPs serving that end office were served by Intrado *and all other carriers established direct trunks to route emergency calls to Intrado*. (VZ Ex. 1 at 60.) As noted, if Intrado fails to secure direct trunking agreements from these carriers, their

end users' emergency calls will not be transmitted to Intrado-served PSAPs.

Intrado's only response to this serious public safety issue is that "Intrado Comm intends to enter into direct interconnection arrangements with all CLECs and wireless carriers needing to send 911 calls to Intrado Comm's PSAP customers." (Intrado Ex. 1 at 46.) Although that may be Intrado's intention, Intrado has no authority to impose its proposed arrangements on any of those carriers.

Intrado's suggestion that direct trunking will somehow benefit Verizon is also unfounded. (Intrado Ex. 1 at 41-42.) Intrado implies its proposal will allow Verizon to more quickly isolate trouble, such as Automatic Number Identification ("ANI") failure conditions, to a particular end office. It also argues that direct end office trunking to Intrado's routers would alleviate potential problems with "saturation" of trunks that might occur over the combined trunk groups and may reduce address validation errors. Intrado witness Hicks concludes that "any investment required to deploy direct trunking may be offset by the savings Verizon realizes from reduced switch maintenance and repair costs and from not having to correct downstream service address errors detected by Intrado Comm's ALI database management process." (Intrado Ex. 1 at 41-42.)

Intrado is wrong on all counts. First, Verizon, not Intrado, has the right to decide how best to configure its own network, and it is certainly *not* the approach Intrado is proposing. Second, direct end office trunking to Intrado's selective routers would exacerbate, not alleviate, potential problems with saturation of trunks. A fundamental traffic capacity principle is that there is greater traffic capacity and less chance of blockage when traffic is aggregated to one group of facilities (Verizon's approach) and a greater chance of 911 call blockage if Verizon is forced to separate its end user traffic to multiple trunk groups (as Intrado proposes). Third, aside from the fact that the potential benefits Intrado raises are purely speculative, its proposal is an

unnecessary, expensive solution to non-existent problems. There are no problems that need addressing today in Verizon's 911 network in terms of ALI failures, lengthy repair times, or address validation errors—and certainly nothing that would justify the major network reconfiguration that Intrado would require. There is absolutely no way any minimal benefits to be gained from Intrado's proposal, even if there were any, could outweigh the enormous expense Verizon (and others) would have to incur to establish and maintain the direct trunking system Intrado proposes. (VZ Ex. 1 at 62-63.)

Moreover, call routing has nothing to do with interconnection under § 251(c)(2) of the Act, so Verizon has no obligation to provide it, let alone provide and pay for it. Like selective routing, any alternative to selective routing would be a process affecting switch translations and line coding and routing, which occur on the ILEC's side of the POI. The ILEC alone is responsible for what happens on its side of the POI, just as the CLEC is responsible for what happens on its side of the POI. Intrado has no right to dictate what Verizon does on its side of the POI. (VZ Ex. 1 at 52-53.)

Even if there were any law to support Intrado's direct trunking/mystery call routing proposal (and there is not), the Department cannot responsibly adopt Intrado's cavalier stance toward critical 911 call routing issues. If Intrado wishes to shift the industry to its direct trunking/new call routing approach, that issue should be worked out by the industry, with participation of all affected agencies and carriers. It is too critical to be left for an ILEC to figure out by itself as the result of a bilateral arbitration decision. (VZ Ex. 1 at 17-18, 55.) As the Florida Commission observed, "any discussion regarding the provisioning of competitive 911/E911 service...requires that all potentially affected parties be consulted and afforded an opportunity to weigh in on these vital matters." (*Fla. Embarq/Intrado Order* at 8; *Fla.*

D. Intrado's Proposal Is Not The Same As Verizon's Interconnection Arrangements With Other Carriers

Intrado claims that it is simply seeking the same types of arrangements Verizon has with other carriers when Verizon serves the PSAP. (Intrado Ex. 1 at 40; Intrado Ex. 2 at 19-20.) It argues that its proposal for Verizon to direct trunk its end users' 911 traffic from Verizon's end offices to Intrado's selective routers is consistent with Verizon's use of dedicated trunks to route its own end users' call to its PSAP customers, and the way in which Verizon requires competitors to deliver their end users' 911 calls to Verizon's selective routers. *Id.* But, as explained above, CLECs bring their traffic, including their 911 traffic, to Verizon's network because *federal law requires them to interconnect on Verizon's network*. (VZ Ex. 1 at 53-54.) And, again, Verizon does not "require" all CLECs to bring their 911 traffic to Verizon's selective routers, but most do so because it is the most efficient solution for them. Also, as discussed under Issue 1, interconnection with Verizon's network by ILECs and CLECs is fundamentally different from Intrado's proposed method of "interconnection," which, unlike Verizon's other arrangements, involves no mutual traffic exchange and build-out to Intrado's 911 network and some new form of call routing.

In any event, the definitive response to Intrado argument that it will be at a competitive disadvantage without direct trunking to Intrado's selective routers (Tr. 51) is that Intrado can have all the direct trunking it wants, *provided Intrado pays for it*. Verizon's proposal allows Intrado to determine how best to get Intrado's traffic from Verizon's selective routers on Verizon's network to Intrado's network. But Verizon has no obligation to pay for the direct trunks Intrado wants or to deploy a new call-sorting method to replace selective routing.

E. The Relationship Between Issues 1 and 5

Together, Issues 1 and 5 define the network architecture that Intrado would impose upon Verizon. Intrado's proposal for Issue 1 would require Verizon to interconnect at POIs Intrado places on its network; Intrado's proposal for Issue 5 would dictate how Verizon sorts those calls and transports them to the POIs on Intrado's network. As explained in more detail under Issue 5, Intrado's proposal would not only allow it to choose the location of the POIs on its own network, but would also impermissibly dictate how Verizon engineers its own network on Verizon's own side of those POIs.

If Issue 1 is resolved (as it should be) by rejecting Intrado's proposal for Verizon to interconnect with Intrado on Intrado's network, then Issue 5 should become moot. There would be no reason to consider the issue of how Verizon might transport traffic to POIs on Intrado's network once the Department determines that Intrado has no right to designate POIs on its own network.

If the Department decides, contrary to law, that Verizon must interconnect with Intrado on Intrado's network, that does not, however, mean it must approve Intrado's specific proposal for Issue 1, which would require Verizon to take 911 traffic to multiple, as-yet-undesignated, POIs on Intrado's network. Even if the Department foists Intrado's network costs upon Verizon by requiring interconnection on Intrado's network, it can and should limit Verizon's transport and interconnection costs by restricting Intrado to a single POI per LATA (unless the parties agree to additional POIs). Indeed, even in Ohio, where Embarq *agreed* to take its traffic to Intrado as a commercial term under section 251(a) of the Act (which Verizon has not agreed to do here or elsewhere), the Commission nevertheless rejected, as unsupported by any law, Intrado's proposals to place multiple POIs on its own network, and required interconnection to

occur within the ILEC's service territory. (*Ohio Embarq/Intrado Order*, at 29; *see also Ohio CBT/Intrado Order*, at 9.)

Finally, even if the Department imposes (contrary to law) some form of obligation for Verizon to interconnect on Intrado's network in resolving Issue 1, that does not mean it must or should accept Intrado's direct trunking/end-office call-sorting proposal for Issue 5. Indeed, the Department should not approve Intrado's Issue 5 proposal under any circumstances. If the Department requires Verizon to take 911 traffic to Intrado's network, Verizon is entitled to decide how to get it there and how to engineer its own network on its own side of the POI. There is no support for requiring Verizon to establish new direct trunks from its end offices to Intrado's POI(s) or to abandon use of its selective routers (which would be on Verizon's side of the POI, whether the POI is on Verizon's network or Intrado's) in favor of some unknown new call-sorting mechanism. And neither Intrado nor anyone else has identified any existing method that could be used to route calls to PSAPs as an alternative to the industry-standard selective routing that Intrado urges the Department to abandon with its Issue 5 proposal.

* * *

For all of the foregoing reasons, the Department should reject Intrado's proposals, which have no basis in law or sound policy. Specifically, the Department should find that Verizon is not required to: (1) interconnect at a POI (or POIs) on Intrado's network; (2) install direct trunking from its end offices to POIs on Intrado's network; (3) forego use of its selective routers and implement a new call routing methodology; or (4) send all 911 calls from split wire centers to Intrado, even where 911 calls are destined for Verizon-served PSAPs. The Department should instead adopt Verizon's language for sections 1.3, 1.4, and 1.7.3 of the 911 Attachment, and sections 2.6, 2.63, 2.64, 2.67, 2.94 and 2.95 of the Glossary.

ISSUE 6: WHETHER 911 ATT. § 1.1.1 SHOULD INCLUDE RECIPROCAL LANGUAGE DESCRIBING BOTH PARTIES' 911/E-911 FACILITIES. (911 Att., § 1.1.1.)

Verizon does not oppose listing its 911 network components in the interconnection agreement and proposed compromise language in its testimony that accurately describes Verizon's 911 facilities and that should have resolved Intrado's asserted concerns. (VZ Ex. 1 at 65.) But a dispute appears to remain because Intrado's language continues to describe Verizon's network components inaccurately.

Intrado's language with respect to Verizon's "Tandem/Selective Router(s)" is deliberately vague as to the function of these routers--which Verizon's language makes clear is to route 911 calls from Verizon end offices to PSAPs--in order to advance Intrado's objective of forcing Verizon to bypass its own selective routers and to instead implement another routing method. In addition, Intrado's language does not reflect the location of a 911 Tandem/Selective Router in Verizon's network--that is, at a point between Verizon's end offices and the PSAPs. (VZ Ex. 1 at 65.)

Only Verizon's proposed language accurately describes Verizon's network arrangements and capabilities. (*Id.* at 66.) Verizon's compromise language accurately describes the key function performed by Verizon's 911 tandem/selective routers in Verizon's network--that is, routing calls from the Verizon end offices from which 911 calls originate to PSAPs. Verizon's language is also consistent with its definition of "Verizon 911 Tandem/Selective Router" in Glossary § 2.64 and properly reflects that Verizon manages the ALI database where Verizon has been selected by the Controlling Authority to do so. (*Id.*)

ISSUE 7: WHETHER THE AGREEMENT SHOULD CONTAIN PROVISIONS WITH REGARD TO THE PARTIES MAINTAINING ALI STEERING TABLES, AND, IF SO, WHAT THOSE PROVISIONS SHOULD BE. (911 Att., § 1.2.1.)

Verizon does not disagree that the parties should cooperate to ensure that misdirected 911 calls are directed to the right PSAP, and it has agreed to language requiring the parties to “establish mutually acceptable arrangements and procedures for inclusion of Verizon End User data in the ALI Database” for areas where Intrado is the 911 provider and manages the ALI (automatic location identification) database. (911 Att., § 1.2.) Indeed, at the hearing, Mr. Hicks recognized that there is no substantive issue here about Verizon cooperating with Intrado with respect to ALI steering, but rather with Intrado’s insistence that Intrado’s ALI steering provision belongs in a section 251(c) agreement:

Verizon has pretty much given me indication that they’re willing to cooperate and do the synchronization of the ALI steering where it’s appropriate and where it’s applicable. The issue is, again, they don’t believe it’s 251(c).

(Tr. 25, 29.)

Intrado’s specific language with regard to ALI steering tables does not belong in an interconnection agreement. (VZ Ex. 1 at 66.) The ALI function is an information service. (VZ Ex. 1 at 67.) Because the FCC has determined that the provision of caller location information to a PSAP is an information service,¹⁸ not a telecommunications service, such services fall outside the scope of interconnection agreements. (VZ Ex. 1 at 67.)

Verizon does have agreements that address the creation of steering tables, including one with Intrado, but they are commercial agreements, and there is no language in them that says Verizon must “maintain” another E911 Service Provider’s steering tables, as Intrado

¹⁸ *Bell Operating Companies Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, CC Docket 96-149, Memorandum Opinion and Order, 13 FCC Rcd 2627 (1998), at ¶ 17.

unreasonably proposes here. To Verizon's knowledge, its commercial agreement with Intrado provides Intrado with everything it needs to conduct its business with respect to ALI database arrangements between the Parties.

If Intrado believes that the existing commercial agreement needs to be modified, that issue is properly addressed in negotiations outside the context of a section 251/252 interconnection agreement. (VZ Ex. 1 at 68.) The Department should thus reject Intrado's proposed language in section 1.2.1 of the 911 Attachment related to ALI databases.

ISSUE 8: WHETHER CERTAIN DEFINITIONS RELATED TO THE PARTIES' PROVISION OF 911/E911 SERVICE SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT AND WHAT DEFINITIONS SHOULD BE USED? (Glossary §§ 2.6 ("ANI"), 2.63 ("911/E-911 Service Provider"), 2.64 ("911 Tandem/Selective Router"), 2.67 ("POI"), 2.94 ("Verizon 911 Tandem/Selective Router"), and 2.95 ("Verizon 911 Tandem/Selective Router Interconnection Wire Center").)

Each of the glossary definitions for Issue 8 is referenced in one or more of the draft interconnection agreement sections in Issues 1, 2 and 5. The principal source of the parties' dispute about the definitions under Issue 8, like many others in this arbitration, is Intrado's unlawful network architecture proposal. In this regard, while the parties agree on most of the definition of "911/E-911 Service Provider" in section 2.63 of the Glossary, Intrado has refused to accept Verizon's language reflecting the legal requirement for POI(s) to be on Verizon's network. The parties have the same dispute with respect to the definition of POI in section 2.67 of the Glossary. There, too, Verizon's proposed definition of "POI (Point of Interconnection)" reflects the legal requirement for the POI to be within Verizon's network. Intrado has unreasonably refused to accept this language, because it maintains the erroneous position that it may designate POIs on its own network. (VZ Ex 1 at 69-70.)

Intrado's proposed definition of "ANI" in Glossary Section 2.6 is related to Intrado-

proposed language in the 911 Attachment that includes an express requirement that Verizon deliver 911 calls to Intrado with ANI. Since the Department should reject Intrado's proposed language for the 911 Attachment for the reasons set out under Issue 1, above, there will be no need for a definition of ANI. Moreover, there is no need to set out in the 911 Attachment language requiring Verizon to deliver 911 calls to Intrado with ANI, because technical aspects of call transport such as this should be left to the evolving requirements of applicable law and industry practice.

Intrado's single generic definition of "911 Tandem/Selective Router" in Glossary section 2.64 does not fully reflect the location and operation of this facility in Verizon's existing retail network. Intrado proposes the following definition of "911 Tandem/Selective Router:"

Switching or routing equipment that is used for routing and terminating originating end user 911/E-911 Calls to a PSAP and/or transfer of 911/E911 Calls between PSAPs.

Verizon agrees that a 911 Tandem/Selective Router is switching or routing equipment that is used for routing end user 911/E-911 calls to a PSAP. Verizon also agrees that in some instances such equipment may be used to transfer 911/E-911 calls between PSAPs. However, a 911 Tandem/Selective Router is not always used for this call transfer purpose—whether or not it will be is determined by the PSAPs. Intrado's joinder of the two possible uses of 911 Tandem/Selective Router (that is, routing end user calls and transferring calls between PSAPs) into a single sentence with the conjunction "and" inaccurately suggests that a 911 Tandem/Selective Router *always* performs the call transfer function. By using the word "or", in the term "and/or" Intrado's language could be interpreted to mean that equipment could be deemed to be a 911 Tandem/Selective Router even if it performed only the PSAP-to-PSAP call transfer function. In Verizon's network, a 911 Tandem/Selective Router would not perform only

this function. It either performs only the first function (routing end user calls to PSAPs), or both the first and second functions, but not just the second alone. Therefore, Intrado's language is inaccurate. (VZ Ex. 1 at 71-72.)

Intrado's definition of "911 Tandem/Selective Router" is also inappropriate because it fails to properly describe the location and function of a 911 Tandem/Selective Router in Verizon's network, which is at a point between Verizon end offices and the PSAPs and which is to route traffic from Verizon end offices to PSAPs. In addition, Intrado's language incorrectly suggests that a Verizon end office switch is a 911 Tandem/Selective Router, when Verizon's end offices cannot perform selective routing functions. (VZ Ex. 1 at 73.)

Verizon defines "911 Tandem/Selective Router" in a way that is appropriate for this equipment in either Party's network as follows: "Switching or routing equipment that is used for routing 911/E-911 Calls." This definition is broad enough to cover both 911 calls routing to a PSAP and 911 call transfer between PSAPs. Verizon's language also properly specifies the location (*i.e.*, between Verizon end offices and the PSAPs) and function (*i.e.*, to receive 911 calls from Verizon end offices and route them to PSAPs) of a "911 Tandem/Selective Router" in Verizon's network as follows: "In Verizon's network, a 911 Tandem/Selective Router receives 911/E-911 Calls from Verizon's End Offices and routes these 911/E-911 Calls to a PSAP."

Verizon's definition of "Verizon 911 Tandem/Selective Router" in Glossary § 2.94, likewise, accurately describes the function of this equipment in Verizon's network: "A 911 Tandem/Selective Router in Verizon's network which receives 911/E-911 Calls from Verizon End Offices and routes these 911/E-911 Calls to a PSAP."

Verizon defines "Verizon 911 Tandem/Selective Router Interconnection Wire Center" in Glossary § 2.95 as: "A building or portion thereof which serves as the premises for a Verizon

911 Tandem/Selective Router.” (VZ Ex. 1 at 74.) Verizon’s proposed definition of “Verizon 911 Tandem/Selective Router Interconnection Wire Center” is appropriate because one of the POIs on Verizon’s network is specifically stated in the 911 Attachment to be a “Verizon 911 Tandem/Selective Router Interconnection Wire Center.”

The Department should adopt Verizon’s proposed definitions because they accurately reflect the structure of Verizon’s network and will therefore reduce the likelihood of future disputes between the Parties because of Intrado’s vague and overly broad definitions.

ISSUE 9: SHOULD 911 ATTACHMENT SECTION 2.5 BE MADE RECIPROCAL AND QUALIFIED AS PROPOSED BY INTRADO COMM? (911 Att. § 2.5.)

Verizon’s proposed § 2.5 provides that nothing in the agreement will limit Verizon’s ability to deliver calls directly to a PSAP served by Intrado. Intrado’s primary proposal is to make this section reciprocal and to qualify it by limiting the reservation of rights to situations where the PSAP has agreed to the direct interconnection. (Intrado Ex. 1 at 58-59.) Verizon responded to Intrado’s reciprocity concerns by offering a new section 2.6 as follows:

2.6 Nothing in this Agreement shall be deemed to prevent Intrado Comm from delivering, by means of facilities provided by a person other than Verizon, 911/E-911 Calls directly to a PSAP for which Verizon is the 911/E-911 Service Provider.

(See VZ Ex. 1 at 75.)

However, Verizon does not agree that sections 2.5 and 2.6 should be qualified by language that interconnection must be authorized by the PSAP, as Intrado proposes (so Intrado now proposes to omit section 2.5, as well as Verizon’s proposed section 2.6, from the agreement altogether). Whether a party has a right to deliver calls to a PSAP is a matter between that party and the PSAP and is outside of the scope of the parties’ agreement. Because Intrado’s language

is an unwarranted intrusion upon Verizon's rights with respect to third parties, it should be rejected. (VZ Ex. 1 at 75.)

ISSUE 10: WHAT SHOULD VERIZON CHARGE INTRADO COMM FOR 911/E911 RELATED SERVICES AND WHAT SHOULD INTRADO COMM CHARGE VERIZON FOR 911/E-911 RELATED SERVICES? (911 Att. §§ 1.3, 1.4 and 1.7; Pricing Att. §§ 1.3, 1.5 and Appendix A.)

ISSUE 11: WHETHER ALL "APPLICABLE" TARIFF PROVISIONS SHALL BE INCORPORATED INTO THE AGREEMENT; WHETHER TARIFFED RATES SHALL APPLY WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; WHETHER TARIFFED RATES MAY AUTOMATICALLY SUPERSEDE THE RATES CONTAINED IN PRICING ATTACHMENT, APPENDIX A WITHOUT A REFERENCE TO THE SPECIFIC TARIFF; AND WHETHER THE VERIZON PROPOSED LANGUAGE IN PRICING ATTACHMENT SECTION 1.5 WITH REGARD TO "TBD" RATES SHOULD BE INCLUDED IN THE AGREEMENT. (GT&C § 1.1; 911 Att. § 1.3 (Verizon § 1.3.3, Intrado § 1.3.6), 1.4.2, 1.7.3; Pricing Att. §§ 1.3, 1.5 and Appendix A.)

Intrado does not dispute Verizon's proposed rates in Appendix A to the Pricing Attachment. Appendix A lists the Department-sanctioned rates for elements that CLECs may take from Verizon, including unbundled network elements, and appropriate references to Verizon's tariff rates for such services as entrance facilities and transport for interconnection, and exchange access services. (VZ Ex. 1 at 76-77.) Verizon's proposed 911 Attachment and the Pricing Attachment would apply applicable tariffed rates to services that Intrado may take, but for which prices are not stated in the agreement. In other words, tariffed rates would apply to tariffed services. Intrado objects to these tariff references. (*Id.*)

There appear to be two reasons. First, Mr. Currier states: "Pricing for interconnection and network elements is to be developed pursuant to the pricing standards contained in Section 252(d) of the Act"--that is, the FCC's Total Element Long-Run Incremental Cost ("TELRIC") methodology. (Intrado Ex. 2 at 27.) Mr. Currier suggests that everything Intrado may possibly order from Verizon must be priced at TELRIC simply because Intrado is what it calls a "co-

carrier” interconnecting with Verizon. (Intrado Ex. 1 at 32; Intrado Ex. 2 at 27.) That is a plainly erroneous notion. Intrado is entitled to TELRIC pricing only for the elements the FCC has identified for such pricing, and these elements, as well as appropriate references to Verizon’s tariff rates, are already included in Appendix A to the Pricing Attachment. Intrado cannot circumvent Verizon’s tariffs and obtain better pricing than any other carrier can for the same service simply by claiming that Intrado needs it for interconnection.

Intrado also argues that without pricing for every element that Intrado may someday take from Verizon, “Intrado Comm cannot effectively compete with Verizon because it will not know its operating costs.” (Intrado Ex. 2 at 28.) Intrado further claims that it needs greater “certainty” (*Id.* at 32), imagining a scenario in which Verizon knows Intrado is planning to enter a particular geographic area and Verizon suddenly changes its tariffed pricing and contends that such “volatile pricing” would make Intrado’s chance of succeeding in the market “tenuous at best.” (*Id.* at 28.)

This argument is unconvincing. Verizon’s generic tariff references are a standard part of Verizon’s Department-approved interconnection agreements with CLECs. (VZ Ex. 1 at 78.) Verizon’s approach is proven and workable and has not had any of the nefarious effects Intrado conjures. Contrary to Intrado’s arguments, Verizon cannot immediately change its tariffed prices on a whim. The rates for the wholesale services that Intrado is likely to purchase from Verizon, such as entrance facilities and transport from Verizon’s access tariffs and collocation from Verizon’s collocation tariff, remain subject to Department review and approval. And Mr. Hicks recognized that the Department would “mark certain that [tariffed rates] were reasonable and fair.” (Tr. 35.)

Verizon offers a wide variety of tariffed services that Intrado might someday purchase. Verizon cannot predict which of these tariffed services, if any, Intrado might wish to take in the future and Intrado probably cannot, either. It would be unreasonable, infeasible, and unnecessary to expect the interconnection agreement to list all of its tariffed rates for all of its services. Verizon's tariff references make clear that Intrado may purchase tariffed services and that it will receive the same, nondiscriminatory rates offered to all CLECs. (VZ Ex. 1 at 79.)

Verizon's proposed provisions with regard to "TBD" (to be determined) rates in section 1.5 of the Pricing Attachment are appropriate because they provide for TBD rates to be replaced by applicable tariff rates (when such rates come into effect), or by rates required, approved or allowed to go into effect by the Department or the FCC. Intrado's criticism that TBD rates should be specifically identified in the Agreement (Tr. 32-35) makes no sense, because it is impossible to specify rates that do not yet exist—that's why they're designated as TBD in the first place.

Unlike Verizon's charges listed in Pricing Attachment A, Intrado's proposed rates *are* in dispute. (*Id.*, at 79-80.) This issue is, again, related to Intrado's Issue 1 proposal to designate POIs on its own network, from which follows Intrado's Issue 5 proposal for Verizon to install and pay for trunks to transport 911 traffic to those POIs. Verizon opposes any charges that assume the implementation of Intrado's "interconnection" proposal.

The entirety of Intrado's pricing proposal is as follows:¹⁹

¹⁹ Intrado's proposed Appendix A, Pricing Attachment.

A. INTERCONNECTION

<u>Service or Element Description:</u>	<u>Recurring Charges:</u>	<u>Non-Recurring Charge:</u>
<u>Per DS1</u>	<u>\$ 127.00</u>	<u>\$ 250.00</u>
<u>Per DS0</u>	<u>\$ 40.00</u>	<u>\$250.00</u>

On its face, it is impossible to tell what Intrado's proposed charges are for. Intrado's proposed language does not specify what services "per DS1" or "per DS0" it proposes to charge for, or what facility arrangements it might have in mind. In his direct testimony, Mr. Currier suggests that Intrado's proposed charges would be for "port terminations" to interconnect at Intrado's POIs on its network (Intrado Ex. 2 at 30), but that is not clear from the contract language it asks the Department to adopt.

Intrado contends that its port termination charges are fair because Verizon imposes trunk port termination charges on carriers terminating traffic on its 911 network. (*Id.*) Intrado's argument has no merit. First, it incorrectly assumes that Intrado may designate POIs on its network at which Verizon will interconnect. Since Intrado must interconnect with Verizon at a technically feasible point on Verizon's network, Intrado has no right to charge Verizon for interconnection and transport facilities to carry 911/E-911 calls to Intrado's network. Therefore, to the extent Intrado would impose port, termination, or other such fees, they are inappropriate. This issue should become moot once the Department determines, in the context of Issue 1, that Intrado cannot force Verizon to interconnect on Intrado's network. As the West Virginia Arbitrator determined, "there will be no Intrado charges to Verizon" because the POI must be on Verizon's network. (*W.V. Award*, at 24.) With respect to pricing provisions in general, the Arbitrator found:

The 911 Attachment and the Pricing Attachment must reflect that Intrado is responsible for the cost of transporting 911/E911 calls outside of

Verizon's network; that Intrado may not bill Verizon for interconnection with the Intrado network or for transport facilities or services; that Intrado must pay Verizon for interconnection with Verizon's network; and that Intrado must pay Verizon for any Verizon-provided facilities or services used to transport 911/E911 calls between a point of interconnection on Verizon's network and Intrado's network. (*W.V. Award*, at 15.)

The Department should make the same finding.

Second, it is not clear just what Verizon rates Intrado is comparing Intrado's rates to or, as noted above, what facility arrangement Intrado's rates represent--so it is impossible to draw any comparison between Verizon's and Intrado's proposed rates.

Finally, Intrado has offered no cost or other justification for the rate levels it proposes for the unspecified "interconnection" services in Appendix A. Even if Intrado had clearly described the services or functions to which its proposed rates are intended to apply (and it did not), the Department would have to reject those rates because Intrado has provided absolutely no support for them. (VZ Ex. 1 at 81-82.)

For all of these reasons, the Department should find that Verizon's proposed references to "applicable" tariff provisions and "TBD" rates are reasonable and should be adopted. The Department should find that because Verizon cannot be required to interconnect on Intrado's network (consistent with the resolution of Issue 1), there is no reason to include in the agreement any charges for interconnecting facilities to points on Intrado's network. The Department should further find that Intrado has not shown that its rates are fair and reasonable rates and that therefore they cannot be adopted.

ISSUE 12: WHETHER VERIZON MAY REQUIRE INTRADO COMM TO CHARGE THE SAME RATES AS, OR LOWER RATES THAN, THE VERIZON RATES FOR THE SAME SERVICES, FACILITIES, AND ARRANGEMENTS. (Pricing Att. § 2.)

The rates of Verizon, as an ILEC, have historically been subject to thorough Department scrutiny and therefore are subject to a presumption of reasonableness. If Intrado wants to charge

Verizon higher rates for comparable services, Intrado should be required to show, based on its costs, that its proposed rates are reasonable. (VZ Ex. 1 at 85.) Intrado complains that Verizon's proposal is "one-sided" and that it "may have the effect of forcing Intrado to lower its rates without competitive justification." (Intrado Ex. 2 at 34.) This claim that Verizon's proposal is one-sided makes no sense; Verizon is not aware of any requirement anywhere for an ILEC to benchmark to CLEC rates. (VZ Ex. 1 at 87.) On the other hand, benchmarking CLEC rates to ILEC rates is a standard part of Verizon's interconnection agreements and is commonly used by regulators to prevent CLEC pricing abuses in a number of contexts without the harmful consequences Intrado predicts. (VZ Ex. 1 at 86-87.) For instance, as Mr. Currier mentions in passing, CLECs must charge symmetrical reciprocal compensation rates with the ILEC, unless a CLEC can justify higher rates based on its costs. (Intrado Ex. 1 at 35.) In addition, the FCC requires benchmarking of CLEC interstate access rates to competing ILEC rates and over a dozen states have implemented similar requirements. (VZ Ex. 1 at 85-86.)

The Department should adopt Verizon's language for § 2 of the Pricing Attachment, which would allow Intrado to charge rates above those Verizon charges for comparable services only if Intrado demonstrates that its costs exceed Verizon's charges for the service.

ISSUE 13: SHOULD THE WAIVER OF CHARGES FOR 911 CALL TRANSPORT, 911 CALL TRANSPORT FACILITIES, ALI DATABASE, AND MSAG, BE QUALIFIED AS PROPOSED BY INTRADO COMM BY OTHER PROVISIONS OF THE AGREEMENT? (911 Att., §§ 1.7.2, 1.7.3.)

The parties have agreed not to charge each other intercarrier compensation for 911/E911 calls. In §§ 1.7.2 and 1.7.3, however, Intrado has proposed language that would create a loophole that might permit such charges. Specifically, Intrado proposes to add the phrase, "Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment" to the agreed-upon language in § 1.7.2. The Department should reject this unnecessary

qualification, which has no legitimate basis. Aside from undercutting the parties' agreement not to bill for transport of 911/E-911 calls, Intrado's proposed language contemplates that Intrado might bill Verizon for interconnection or facilities for transport of 911/E-911 calls to Intrado's network, which, as discussed in Issue 1, incorrectly assumes that Intrado may designate POIs on Intrado's network. Moreover, if Intrado's objective is to allow it to bill charges in connection with the ALI database or the MSAG, Intrado should recover these costs from the applicable government agency as part of the 911 services Intrado provides for the PSAP. (VZ Ex. 1 at 89-90.)

Intrado also proposes language in § 1.7.3 that would require Verizon to pay Intrado to interconnect at POIs on Intrado's network. That is inappropriate for the reasons discussed in Issue 1. (VZ Ex. 1 at 90.)

For all of these reasons, the Department should reject Intrado's proposed language in dispute in 911 Attachment §§ 1.7.2 and 1.7.3.

ISSUE 14: SHOULD THE RESERVATION OF RIGHTS TO BILL CHARGES TO 911 CONTROLLING AUTHORITIES AND PSAPS BE QUALIFIED AS PROPOSED BY INTRADO COMM BY "TO THE EXTENT PERMITTED UNDER THE PARTIES' TARIFFS AND APPLICABLE LAW"? (911 Att., §§ 2.3, 2.4.)

The agreed-upon language for sections 2.3 and 2.4 of the 911 Attachment specifies that nothing in the Agreement shall prevent Verizon or Intrado from billing PSAPs for specified services, facilities and arrangements. Intrado seeks to qualify this language with the phrase "[t]o the extent permitted under the Parties' Tariffs and Applicable Law." According to Intrado, this clause is necessary to prevent Verizon from having free rein to bill Massachusetts PSAPs for services that Verizon no longer provides to them. (Intrado Ex. 2 at 36-37.)

Intrado is wrong. Its proposed language is nothing more than an unwarranted attempt to restrict Verizon's ability to charge a PSAP for services that it will continue to provide even when

Intrado provides 911 services to that same PSAP. (VZ Ex. 1 at 91.) Intrado attempted to impose a similar restriction by filing a petition with the Florida Public Service Commission seeking a declaratory statement that ILECs may not charge PSAPs or Intrado for any tariffed services once a PSAP chooses Intrado as a 911 network services provider. The Florida Commission denied Intrado's petition, finding that Intrado failed to consider that ILECs may have to continue to provide certain services to Intrado or the PSAP in order for Intrado's primary E911 service to function properly, and for which the ILECs are entitled to compensation.²⁰

Obviously, no company has free rein to bill an entity for services it does not provide, and nothing in the undisputed portion of the language for section 2.3 and 2.4 in any way states or implies that Verizon would be able to do so. These provisions are reservations of rights as between Verizon and Intrado; they do not and cannot affect any rights with respect to third parties, including PSAPs. If a PSAP believes that Verizon is charging it for tariffed services that Verizon is not providing, that is a matter between the PSAP and Verizon--not for an interconnection agreement between Verizon and Intrado. The Department should reject Intrado's attempt to intrude upon Verizon's relationships with third parties. (VZ Ex. 1 at 92.)

The foundation of Intrado's positions in this arbitration is that other carriers and their end users who call 911 should bear the cost of Intrado's proposed 911 system. By qualifying the statement of Verizon's right to charge for specified services provided to PSAPs with a reference to Intrado's own tariffs, Intrado will have the opportunity to--and no doubt, will--insert language

²⁰ VZ Ex. 1 at 70-71, citing *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service*, by Intrado Communications, Docket No. 080089-TP, Order Denying Amended Petition for Declaratory Statement, Order No. PSC-08-0374-DS-TP, at 14 (Fla. P.S.C. June 4, 2008).

in its tariff reflecting its view that Verizon cannot charge PSAPs anything when Intrado is serving the PSAP. (*Id.*)

The Department should reject Intrado's attempt to prohibit Verizon from charging for services it will continue to provide to PSAPs even when those PSAPs are also served by Intrado, just as the Florida Commission did and just as the West Virginia Commission did. (*W.V. Award*, at 28.)

ISSUE 15: SHOULD INTRADO COMM HAVE THE RIGHT TO HAVE THE AGREEMENT AMENDED TO INCORPORATE PROVISIONS PERMITTING IT TO EXCHANGE TRAFFIC OTHER THAN 911/E-911 CALLS? (GT&C § 1.5)

In the event that Intrado seeks to provide services other than 911/E911 services while the interconnection agreement is effective, Intrado wants the right to request and obtain an amendment covering those other services. (VZ Ex. 1 at 94, *citing* Intrado proposed § 1.5, General Terms and Conditions.)) Intrado's proposed language states:

Notwithstanding the foregoing, the Parties agree that: (a) Intrado Comm may seek to offer telecommunications and local exchange services other than 911/E-911 Calls in the future; and (b) upon Intrado Comm's request, the Parties will amend this Agreement as necessary to provide for the interconnection of the Parties' networks pursuant to 47 U.S.C. § 251(c)(2) for the exchange of traffic other than 911/E-911 Calls.

This language provides Intrado the unilateral right to an amendment, outside of the contract's change of law provisions, which would allow either Party to seek to amend the agreement under appropriate circumstances. The change of law provision in § 4.6, unlike Intrado's proposed language above, specifies how the Parties may resolve disputes and the circumstances under which amendment would be appropriate. Intrado's language is inappropriate, because the parties agreed to negotiate and arbitrate an agreement based largely on the fact that Intrado is seeking to provide only 911-related services to PSAPs. This

interconnection agreement approach is unique; the give-and-take in negotiations and the parties' compromises assumed a much narrower scope of services and operation than the usual agreement, under which the CLEC, unlike Intrado, will provide basic local exchange services to end users. Absent a change in law affecting provisions of the agreement which would allow a Party to request an amendment to the agreement (*see* § 4.6, General Terms and Conditions), Intrado should not have a unilateral right to seek an amendment to the agreement. (VZ Ex. 1 at 95.) It is not appropriate to allow Intrado to retain the benefit of any provisions already obtained through negotiation or arbitration and then seek the benefit of additional provisions associated with exchange of traffic other than 911/E-911 calls.

If Intrado wishes to greatly expand the scope of the agreement, it should negotiate an entirely new agreement in which all of the provisions of the agreement will be at issue and the parties will be able to engage in a fair and balanced trade-off of one provision against another. The Department should find, as the West Virginia Commission did, that Intrado's proposal for section 1.5 of the General Terms and Conditions is contrary to the Act's requirement to make available to requesting carriers entire agreements, not pieces of agreements. (VZ Ex. 2 at 63, citing *W.V. Award*, at 26.)

ISSUE 16: SHOULD THE VERIZON-PROPOSED TERM "A CALLER" BE USED TO IDENTIFY WHAT ENTITY IS DIALING 911, OR SHOULD THIS TERM BE DELETED AS PROPOSED BY INTRADO COMM? (911 Att. § 1.1.1)

Verizon proposes including the term "a caller" in section 1.1.1 of the 911 Attachment to make clear what entity is dialing 911. Intrado contends that there is no reason for the description of "911/E-911 Arrangements" to include what entity is dialing 911.

Section 1.1.1 describes how 911/E-911 arrangements provide access to the appropriate PSAP by dialing "911." Verizon simply proposes to include "a caller" between the words "provide" and "access" so that the sentence reads: "911/E-911 arrangements provide a caller

access to the appropriate PSAP by dialing a 3-digit universal telephone number, ‘911.’” Verizon’s language accurately describes the function of 911/E911 arrangements and provides additional clarity. (VZ Ex. 1 at 96-97.)

Intrado is seeking interconnection with Verizon so that Verizon customers calling 911 can reach PSAPs served by Intrado. No other “entities” would call 911. Verizon’s customers acquire access to the appropriate PSAP by dialing “911.” In other words, for Verizon’s end user customers to summon emergency services, they must place a call to 911-that is, be “a caller.” Inclusion of the phrase “a caller” in § 1.1.1 of the 911 Attachment accurately describes the access that 911/E911 arrangements provide to a caller, and there is no legitimate reason for Intrado to object to this simple clarification. (*Id.* at 98.) The Department should, therefore, adopt Verizon’s proposed language for section 1.1.1 of the 911 Attachment, as the West Virginia Commission did. (*W.V. Award*, at 26.)

III. CONCLUSION

For all of the reasons in Verizon’s testimony and this brief, Verizon asks the Department to adopt its positions and associated contract language with respect to all the issues in this arbitration.

Respectfully Submitted,

VERIZON NEW ENGLAND INC. d/b/a
VERIZON MASSACHUSETTS

By its Attorneys:

Alexander W. Moore
Joseph M. Ruggiero
185 Franklin Street, 13th Floor
Boston, MA 02110-1585
(617) 743-2265

Dated: February 26, 2009