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.	**)**	

REPLY BRIEF OF
VERIZON MASSACHUSETTS

Dated: March 12, 2009

TABLE OF CONTENTS

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REPLY BRIEF OF VERIZON MASSACHUSETTS

I. INTRODUCTION

Intrado's Initial Brief, like its earlier filings in this case, is long on ill-founded and irrelevant policy arguments and short on the law. Although Intrado has petitioned for interconnection under section 251(c) of the Communications Act of 1934 ("Act") – and only section 251(c) – it openly seeks interconnection arrangements that are unlike any interconnection arrangements Verizon has with any other carrier and that have nothing to do with Verizon's duties under section 251 (or any other law). There is no law to support, let alone require, adoption of Intrado's unprecedented and anticompetitive proposals. Section 251(c) does not distinguish between interconnection for "emergency services" and interconnection for other services, and Intrado can point to nothing that says it does.

As Verizon discussed in its Initial Brief, the issue of Intrado's entitlement to the section 251(c) interconnection it seeks is an open question before the FCC's Wireline Competition Bureau in Intrado's arbitrations with Verizon and Embarq.[1] In the meantime, other commissions

[1] 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.

have already determined that Intrado is not entitled to section 251(c) interconnection for its 911 services, let alone special treatment beyond what Congress provided in the Act. Since Verizon filed its Initial Brief, the Florida Commission has denied Intrado's motions for reconsideration of the Commission's rulings dismissing Intrado's petitions for arbitration with AT&T and Embarq, because Intrado is not providing "telephone exchange service" or "exchange access" that would entitle it to section 251(c) interconnection. 47 U.S.C. § 251(c)(2)(A).[2] Verizon has asked the Commission for the same ruling in its arbitration with Intrado there. And as Verizon noted in its Initial Brief, the Administrative Law Judges ("ALJs") in Intrado's arbitration with AT&T in Illinois have now 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. The ALJs correctly concluded that the Commission was not authorized to "expand the specific provisions of the law beyond their apparent meaning" to grant section 251(c) interconnection rights to Intrado when Congress had not done so.[3]

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

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(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).

[2] *See Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with BellSouth Telecomm., Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C.*, Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) ("*Fla. AT&T/Intrado Order*") (attached to Verizon's pre-filed Testimony as Exhibit 1.1), at 8; *Petition by Intrado Comm., Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Florida, Inc., Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, and Section 364.162, F.S.*, Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) ("*Fla. Embarq/Intrado Order*") (attached to Verizon's pre-filed Testimony as Exhibit 1.2), at 8. The Commission voted to deny Intrado's petitions for reconsideration on March 3.

[3] *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*"), at 18.

arbitration.

As explained in Verizon's recent Motion for Abeyance, the FCC Bureau intends to resolve by early May the threshold issue of Intrado's entitlement to section 251(c) interconnection.[4] Pending the Bureau's ruling, Intrado and Verizon have already agreed to hold in abeyance their Delaware and North Carolina arbitrations. An abeyance would, likewise, be the most sensible and efficient course here.

As Verizon noted in its Initial Brief, its positions on the substantive issues are offered only 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.)

To the extent Intrado suggests (albeit without expressly stating) that the Commission may analyze Intrado's proposals under section 251(a) (Intrado Br. at 12-13), this suggestion is wrong – as well as astonishing, given Intrado's insistence that analyzing its interconnection proposals

[4] *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).

under any provision other than section 251(c) would be unlawful. In its arbitration with Cincinnati Bell in Ohio, for instance, Intrado told the Ohio Commission that "Section 251(c) applies *whenever* a competitor like Intrado Comm seeks interconnection from an ILEC."[5]

Leaving aside Intrado's credibility problem, while Intrado is correct that arbitration is permitted for issues outside of 251(b) and 251(c) in certain circumstances (Intrado Br. at 13), those circumstances are not present here. As the Fifth Circuit made clear in the *CoServ* case cited by Intrado, a state Commission may arbitrate issues outside of the ILEC's obligations under section 251(b) and (c) ***only if the parties agreed to include those issues in their negotiations***:

> We hold, therefore, that where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by *§ 251(b) and (c)*, those issues are subject to compulsory arbitration under *§ 252(b)(1)*. The jurisdiction of the PUC as arbitrator is not limited by the terms of *§ 251(b) and (c)*; instead, it is limited by the actions of the parties in conducting voluntary negotiations. It may arbitrate only issues that were the subject of the voluntary negotiations. The party petitioning for arbitration may not use the compulsory arbitration provision to obtain arbitration of issues that were not the subject of negotiations.[6]
>
> *CoServ* at 487 (emphasis in original).

Intrado implies that the Department should do in this case exactly what the *CoServ* Court said state commissions could not do – that is, force Verizon to arbitrate issues that were not the subject of negotiations, and that are not related to Verizon's duties under sections 251(b) and 251(c). Intrado did not seek negotiation of any section 251(a) terms in negotiations, so Verizon certainly could not have agreed to arbitrate any such terms. Throughout negotiations and this

[5] *Petition of Intrado Comm for Arbitration of Application for Rehearing of Intrado Communications Inc. Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Tel. Co.*, Application for Rehearing of Intrado Comm. Inc., Case No. 08-537-TP-ARB, at 4 (filed Nov. 7, 2008).

[6] *CoServ Limited Liability Corp. v. Southwestern Bell Tel. Co., P.U.C. of Texas, et al.*, 350 F.2d 482, 487 (5th Cir. 2003) (emphasis in original).

arbitration, Intrado has insisted on section 251(c) interconnection, and only section 251(c) interconnection. The parties' legal arguments have, therefore, been framed in terms of section 251(c), with Intrado contending that section 251(c) supports its interconnection proposals and Verizon explaining why section 251(c) does not support Intrado's proposals. Neither party has analyzed Intrado's proposals in terms of section 251(a) or taken any positions with respect to the legal standards or the procedures that might apply under section 251(a). As a federal District Court in Texas found in ruling that a company cannot be compelled to arbitrate an agreement with respect to duties under section 251(a), "[a]lthough there are duties established by § 251(a)…the Court cannot find any language in the Act indicating that these duties independently give rise to a duty to negotiate or to arbitrate."[7]

Verizon has also emphasized that this section 252 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.) 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 and verifying compliance with standards to ensure a consistent statewide approach for E911. The 911 Department makes the 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

[7] *Sprint v. Pub. Util. Comm'n of Texas, Order and Brazos Tel. Coop., Inc*., Case No. A-06-CA-0650-SS, 2006 U.S. Dist. LEXIS 96569 (Aug. 14, 2006), at 16, appended to this brief and identified as Attachment 1.

Massachusetts, nor can the Department substitute its judgment for the 911 Board's with respect to permissible 911 arrangements under the state 911 statutes. The Department's sole task (if it proceeds with this arbitration at all) is to evaluate Intrado's proposals under section 251(c) and, if they are not supported by section 251(c), reject them (or dismiss Intrado's arbitration petition outright).

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

Nothing entitles Intrado to demand that Verizon interconnect with Intrado at multiple points on Intrado's network, as far from Verizon facilities as Intrado wishes, or to dictate that Verizon establish multiple direct trunks to those multiple Points of Interconnection ("POIs"), or to forbid Verizon and other carriers from using Verizon's selective routers to sort traffic to the appropriate PSAP. As Verizon has explained, Intrado's extreme plan is rooted in Intrado's objective of shifting as much of its network costs to Verizon as it can, so Intrado can price its overall service more attractively and gain an unfair competitive advantage. Indeed, Intrado openly recommends that the retail customers of Verizon and other carriers bear the costs of Intrado's network. (*See, e.g.*, Intrado Ex. 2 at 21, 24; Verizon Ex. 1 at 56.) As Verizon has emphasized, 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

and its customers (and other carriers and their customers) to pay for that network, as it seeks to do.

Again, the fundamental problem with Intrado's case—and that the ALJs in Intrado's Illinois arbitration aptly identified--is that the law under which it chose to petition for interconnection does not fit its business plan to provide 911 services. Rather than pursuing unavailing efforts to torture the law to fit its plans, Intrado would be better served by negotiating reasonable commercial interconnection arrangements to provide its 911 services. Verizon stands ready to negotiate such arrangements and remains willing to offer Intrado interconnection arrangements that are comparable to those Verizon has in place with competing local exchange carriers.

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 the Department knows, the parties' principal dispute with respect to Issue 1 is whether Verizon can be forced to interconnect with Intrado on Intrado's own network when Intrado provides 911 service to a PSAP. Despite Intrado's repeated recognition that federal law requires the POI to be within Verizon's network (Intrado Br. at 14-15; Intrado Petition for Arb. at 6-7; Intrado Ex. 1 at 19; Tr. at 20), Intrado proposes to place POIs on its own network – as many as it wishes, anywhere that it wishes, and as far from Verizon's network as Intrado wishes. Intrado states that "Verizon is wrong when it claims that Intrado Comm's language would allow Intrado Comm to choose as many POIs as it wishes" (Intrado Br. at 23), but that is exactly what Intrado's language (which Intrado never quotes in its brief) would allow Intrado to do:

> 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.

(Intrado's proposed § 1.3.2 of the 911 Attachment (emphasis added).) "A minimum of two," of course, means at least two, but not limited to two or any other number.

But whether Intrado intends to place 2 or 200 POIs on its network, there is no law permitting Intrado to do so. Intrado stops short of arguing that anything in the Act *requires* the Department to adopt its extreme proposal. Instead, it makes the *policy* argument that giving Intrado the unilateral discretion to choose POIs on its network "benefits public safety" (Intrado Br. at 23) and claims support for its policy arguments in an assortment of sections in the Act, none of which speaks to POI placement, and an FCC case that has nothing to do with interconnection.

As Verizon explained in its Initial Brief, the POI placement issue is easy to decide because the governing law is so clear. 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.*" (47 C.F.R. § 51.305 (emphasis added).) These rules apply to all traffic exchanged between an ILEC and an interconnecting carrier. Neither section 251(c) nor anything else in the Act prescribes different rules for 911/E911 calls than for all other calls, and the Department cannot change federal law based on Intrado's misguided policy arguments.

Contrary to Intrado's arguments, the Department's task in this arbitration is not to decide what 911 "policies and arrangements" are best for Massachusetts (Intrado Ex. 2.0 at 15-16, Intrado Ex. 1.0 at 7-8, 13), but to apply the interconnection requirements Congress dictated

through the Act. The development of 911 policies and the planning, administration, implementation, and funding of 911 systems are matters for the 911 Board, not the Department. (*See* M.G.L. ch. 6A, § 18B-I; 560 CMR, "Statewide Emergency Telecomms. Board.") 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.

A. The Department Cannot Find that Congress Intended Something Other than What It Said in the Act.

As Intrado recognizes, section 251(c)(2), which governs the interconnection arrangements under arbitration, imposes four requirements upon the ILEC (Intrado Br. at 14) – that is, the duty to provide interconnection with its network "for the transmission and routing of telephone exchange service and exchange access" (47 U.S.C. § 251(c)(2)(A); "at any technically feasible point within the carrier's network" (47 U.S.C. § 251(c)(2)(B); "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)); and "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252" (47 U.S.C. § 251(c)(2)(D).)

Despite citing all four provisions, Intrado tries to convince the Department to ignore the section 251(c)(2)(B) requirement for the POI to be on the ILEC's network because that rule was "established for the benefit of the competitor, not the ILEC." (Intrado Br. at 15.) Intrado's view is that, in this case, interconnecting within Verizon's network, as the Act and the FCC's rule require, would not be the most favorable arrangement for Intrado, so the Department need not

follow those legal requirements. Intrado suggests that the FCC allows Intrado to demand arrangements other than interconnection on the ILEC's network: "While [the single point of interconnection] rule was available to competitors, the FCC expressly recognized that competitors were not precluded from establishing an alternative arrangement, such as one that permitted the ILEC to deliver its traffic to a different point or additional points that were more convenient for the incumbent than the single point designated by the competitor."[8]

This argument deserves no serious consideration. The FCC has not recognized, "expressly" or otherwise, that interconnecting carriers may force an ILEC into an "alternative arrangement" for interconnection on the interconnecting carrier's network. What the FCC actually said in the passage Intrado cites is that the rule requiring the ILEC and competing carrier to exchange traffic at the same point on the ILEC's network "does not preclude the parties from *agreeing* that *the incumbent* may deliver its traffic to a different point or additional points that are more convenient for *it*." (*Virginia Arbitration Order*, ¶ 71 (emphasis added).) Therefore, the ILEC and an interconnecting carrier may ***agree*** to negotiate different points that are more convenient ***for the ILEC***. But the competing carrier may not force the ILEC to interconnect at points that are less convenient for the ILEC.

Intrado's argument, moreover, presumes that Verizon has forced CLECs to take their 911 traffic to different POIs on Verizon's network than those established for non-911 traffic – leading Intrado to conclude that it can force Verizon to take its traffic to Intrado's network. This makes no sense. Again, competing carriers bring all their traffic to Verizon's network because they are required to under federal law; there is no reciprocal requirement for Verizon to take any

[8] Intrado Br. at 15, *citing Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, etc.*, Memorandum Opinion and Order, 17 FCC Rcd 27039 ("*Virginia Arbitration Order*") at ¶ 71 (2002).

traffic, 911 or otherwise, to a competing carrier's network. And Verizon does not force CLECs to establish different or additional points of interconnection for 911 traffic. Rather, as Verizon has repeatedly pointed out, CLECs may ***agree*** to interconnect at Verizon's selective routers for 911 traffic (while other traffic may be delivered to a different POI on Verizon's network), because it is efficient for them to have Verizon route their 911 calls, and they may be interconnected at that same location for purposes in addition to 911 traffic. (Tr. 42.)

Intrado also suggests that Verizon is violating section 251(c)(2)(D), quoted above, which requires the ILEC to interconnect on "just, reasonable, and nondiscriminatory" conditions, because Verizon will not interconnect on Intrado's network as other carriers interconnect on Verizon's network. But again, Intrado is ignoring section 251(c)(2)(B), which requires interconnection within the ILEC's network. The Department must apply all four of section 251(c)(2)'s requirements; it cannot read section 251(c)(2)(D) to override section 251(c)(2)(B)'s requirement for the POI to be on the ILEC's network, and nothing Intrado cites supports this interpretation.[9] Even if Intrado were the kind of true local exchange competitor Congress envisioned (and it is not), the Department could not accept Intrado's position that Congress *really* intended to give requesting carriers whatever kind of interconnection arrangements they want--despite the specific interconnection requirements Congress wrote into the Act, and despite the burdens they might impose on the ILECs and their customers.

Verizon has offered Intrado the same interconnection arrangements it offers to all interconnecting carriers, including interconnection on Verizon's network. As Intrado itself points out, "ILECs may not discriminate against parties based upon the identity of the carrier." (Intrado Br. at 16, *citing Local Competition Order*, ¶ 218.) But that is exactly what Intrado urges

[9] Intrado Br. at 16 nn. 68 & 69, *citing Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ("*Local Competition Order*") (1996), at ¶¶ 217, 218 .

the Department to do – discriminate in Intrado's favor because Intrado is providing just 911 service, instead of the complete local exchange service other interconnecting carriers provide to their customers. The Department cannot sanction such discriminatory treatment.

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

In another variation of its argument to read the POI-on-the-ILEC's-network requirement out of the Act, Intrado urges the Department to find that 251(c)(2)(C)'s "equal-in-quality" requirement trumps the POI placement directive in section 251(c)(2)(B). Intrado says that, regardless of the requirement for the POI to be within the ILEC's network, section 251(c)(2)(C) requires Verizon to interconnect at the selective routers on Intrado's network because Verizon's customary arrangement with CLECs is for CLECs to interconnect at Verizon's selective router. In other words, Intrado interprets the equal-in-quality requirement in section 251(c)(2)(C) to implicitly address POI placement, even through section 251(c)(2)(B) explicitly addresses POI placement. (*See* Intrado Br. at 20-21.)

Verizon fully addressed this plainly erroneous argument in its Initial Brief. (Verizon Br. at 13-18.) Again, 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 (*i.e.*, technical criteria and service standards), not *where* the interconnection occurs. As noted, section 251(c)(2) includes four separate criteria, *all* of which apply to the interconnection ILECs must offer under section 251(c), and each of which addresses

a different aspect of the interconnection relationship. The "equal-in-quality" subsection cannot be read to cancel out the plainly stated requirement for the POI to be on the ILEC's network.

Intrado's (incorrect) legal interpretation of section 251(c)(2)(C), moreover, rests on the incorrect factual premise that Verizon "routinely requires all competitive carriers" to bring their 911 calls to Verizon's selective routers. (Intrado Br. at 19.) As Verizon has repeatedly corrected Intrado, Verizon's "template" interconnection agreement cannot and does not "mandate" anything. (*See* Intrado Br. at 6.) CLECs that agree to bring their 911 traffic at Verizon's selective routers do so based upon their own self-interest. (Verizon Ex. 1 at 48-49; Tr. 42.) Contrary to Intrado's claims, Verizon has not "ignored the benefit extended to CLECs under Section 251(c)(2)(B) entitling CLECs to a single POI when the traffic at issue is 911 calls." (Intrado Br. at 22.) Verizon and interconnecting carriers are free to ***agree*** to additional POIs on Verizon's network, and that is what they have done in the case of 911 traffic. And, once again, those agreements for particular interconnection arrangements were made in the context of the requirement for the POI(s) to be on the ILEC's network. CLECs' agreements to deliver their 911 traffic to Verizon's network, in accordance with section 251(c), provide no legal basis for Intrado to force Verizon to take its traffic to Intrado's network.

Contrary to Intrado's claims, Verizon has never "admitted that the POI for connecting to the 911/E-911 network is at the selective router" (Intrado Br. at 17, *citing* Tr. 101).) On the contrary, in the portions of the hearing transcript Intrado cites, Verizon witness D'Amico was clearly limiting the discussion to a description of certain existing *voluntary* agreements between Verizon and other CLECs, and not a generic determination – let alone a legal determination – of the POI location:

Under the 911 points of interconnection [provision of the ICA], per the *negotiated*

> arrangements, with the particular CLECs and CRMS carriers, they have a point of interconnection on Verizon's network at the selective router… So in answer to your question, the CLEC has *elected* points of interconnection at Verizon's network at the 911 selective routers.
>
> (Tr. 101 (emphasis added).)

Nor has "the FCC determined that, when a 911 call is made, the carrier must bring the 911 call" to "the 911 selective router serving the PSAP." (Intrado Br. at 18.) To make this claim, Intrado blatantly misrepresents the FCC's *King County* case.[10] In *King County*, the FCC did *not* determine that the POI must be at the selective router of the carrier serving the PSAP; indeed, the case had nothing at all to do with POIs, section 251, interconnection agreements, or any aspect of ILECs' relationship with interconnecting carriers. In *King County*, the FCC settled a dispute between *wireless carriers and PSAPs* with respect to the allocation of costs between them for wireless E911 implementation. The FCC affirmed its Wireless Telecommunications Bureau's interpretation of FCC rule 20.18(d) to require that: "The proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router *maintained by the Incumbent Local Exchange Carrier* (ILEC)." (*King County*, ¶ 4, *quoting* King County Letter at 1 (emphasis added).) The FCC's establishment of a paradigm for allocating the costs of implementing wireless E911 services as between wireless carriers and PSAPs has nothing do with the issue of where the POI must be under a section 251(c) interconnection agreement, and nothing to do with competitive provision of E911 services. There is no FCC precedent authorizing this Department to ignore the Act and the FCC's rule for

[10] *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, Order on Reconsideration, 17 FCC Rcd 14789 (2002) ("*King County*"); Letter from Thomas J. Sugrue, Chief, Wireless Telecomm. Bureau, FCC, to Marlys R. Davis, E911 Program Manager, Dep't of Information and Admin. Services, King County, Washington, WT Docket No. 94-102 (dated May 7, 2001) ("King County Letter").

the POI to be within the ILEC's network.

Finally, Intrado's argument that Verizon must provide the interconnection arrangements Intrado requests unless they are technically infeasible is nonsense. (Intrado Br. at 22-23.) The technical feasibility analysis would come into play only if Verizon had refused to provide Intrado interconnection at some point *within Verizon's network*. Again, section 251(c)(2) requires an incumbent local exchange carrier to provide interconnection with its network "at any technically feasible point within the carrier's network." There is no requirement for a technical feasibility analysis as to POIs within interconnecting carriers' network, because there is no requirement for the ILEC to interconnect on that other carrier's network.[11]

C. There Are No Industry Recommendations Supporting Intrado's Proposal.

Intrado argues that its proposal for two geographically diverse POIs is consistent with "industry recommendations" (Intrado Br. at 24.) But there are no 911 industry recommendations or guidelines ***at all*** with respect to POIs under section 251 interconnection agreements, which is the issue the Department must resolve in this section 252 arbitration—not defining 911 policies or practices for Massachusetts.

Intrado's claims about the alleged consistency of its proposals with industry guidelines and recommendations relate only to general recommendations for diversity and redundancy in 911 networks, rather than Intrado's specific interconnection proposals. Indeed, the only industry filings Verizon has seen in any of Intrado's arbitrations are critical, not supportive, of Intrado's

[11] In addition to its erroneous claims that sections 251(c)(2)(C) and 251(c)(2)(D) give the Department authority to adopt Intrado's proposals, Intrado argues that sections 251(e), 253(b) and 706 of the Act provide such authority. (Intrado Br. at 10-12.) Verizon already fully addressed this argument in its Initial Brief (at 18-21), explaining that nothing in any of these provisions has anything to do with determining Verizon's interconnection obligations in this arbitration. 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 section 253(b) is a "safe harbor" provision reserving to the states their existing regulatory authority over certain matters, despite section 253(a)'s prohibition on state requirements precluding any entity from providing telecommunications services.

network proposals. The West Virginia Enhanced 9-1-1 and a coalition of Texas 911 authorities, for instance, cited reliability and public safety issues related to Intrado's proposals.[12] And even though it dismissed Intrado's petitions for arbitration with AT&T and Embarq, the Florida Commission expressed concerns about the public safety drawbacks of Intrado's plan to force carriers to haul calls to distant points on its network.[13]

Again, this is not a proceeding to decide the best 911 polices and arrangements for the Commonwealth of Massachusetts, so Intrado's speculation about the potential merits of its as-yet-unbuilt network and its allegations about how that unbuilt network might satisfy 911 Board or industry standards, are not relevant to determining Verizon's section 251(c) interconnection obligations. In any event, as Verizon has explained, particularly in the context of Issue 5, Intrado's proposals are more likely to undermine than enhance the reliability of the 911 network – which, as Intrado itself admits, is already diverse and redundant (Intrado Br. at 25) and which complies with all standards established by the 911 Board.

D. There Is No Requirement for Verizon to Haul Its 911 Traffic to Distant Points.

Intrado argues that "LATA boundaries are inapplicable to 911/E-911 services," presumably in service of its proposal for Verizon to haul traffic to multiple POIs on Intrado's network, as distant from Verizon's network as Intrado wishes them to place them. Intrado's observations that 911 calls may cross LATA boundaries (Intrado Br. at 26) have nothing to do

[12] *See* Verizon Testimony at 47, *citing* Letter from Robert Hoge, Secretary, West Virginia Enhanced 9-1-1 Council, to Sandra Squire, Exec. Sec'y, W.V. Pub. Serv. Comm'n (dated Nov. 7, 2008) ("*WV 911 Council Letter*") (Verizon Ex. 1.10); *Petition of Intrado Comm., Inc. for Compulsory Arbitration with Verizon Southwest Under the FTA Relating to Establishment of an Interconnection Agreement*, Docket. No. 36185, 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 (filed Oct. 17, 2008) ("*Texas 911 Alliance Motion*") (Verizon Ex. 1.9).

[13] *Intrado/Embarq Order*, at 33; *Fla. AT&T/Intrado Order*, at 8 ("We are concerned that carriers could potentially be transporting 911/E911 emergency calls up and down the state or perhaps even out of state."); *Fla. Embarq/Intrado Order*, at 7 ("We are concerned that carriers may be forced to transport 911/E911 calls over great distances, perhaps even out of state.").

with placement of POIs in a section 251(c) interconnection agreement. The fact that 911 calls may cross LATA boundaries in no way requires Verizon to haul those calls to Intrado's network at POIs outside (or, for that matter, inside) the LATA, and Intrado can point to no authority for this proposition.

Indeed, even in Intrado's arbitrations with Embarq and Cincinnati Bell in Ohio, where the ILECs agreed to take their 911 traffic to Intrado's network, the Commission rejected Intrado's proposal for multiple POIs and required interconnection to occur within the ILEC's service territory, unless the parties mutually agree otherwise. (*Ohio CBT/Intrado Order* at 9; *Ohio Embarq/Intrado Order* at 33.)

E. Intrado's Proposals Would Disadvantage Other Carriers and the General Public.

As Verizon has explained, Intrado's proposal for Verizon to direct trunk 911 calls from its end offices to POIs on Intrado's network means that CLECs and wireless carriers will no longer be able to aggregate their traffic at Verizon's selective routers for transmission to the PSAPs, as most of those carriers do today. (Verizon Ex. 1 at 41, 50-51.) Instead, those carriers will, like Verizon, have to direct trunk their traffic to Intrado's selective routers on Intrado's network. If they do not have such trunking arrangements in place with Intrado, their customers' 911 calls will not reach Intrado-served PSAPs. (Verizon Ex. 1 at 52.)

Intrado argues that these new arrangements will not disadvantage those carriers because they will have the opportunity to interconnect with Intrado at "at least two, and possibly more, selective routers in every state in which Intrado Comm plans to offer service." (Intrado Br. at 27.) Intrado calls Verizon's concerns about the effect of Intrado's proposals on other carriers "misplaced and not relevant to its interconnection arrangement with Intrado Comm." (Intrado Br. at 27.)

Having tried to sell its proposals mainly with allegations about their public interest

benefits, Intrado cannot cry foul when Verizon rebuts Intrado's ill-founded claims. Intrado's proposals will most certainly disadvantage other carriers, as well as the general public.

First, with respect to other carriers, Intrado's proposal, if adopted, would disadvantage all other carriers with which Verizon has section 251 interconnection agreements, because none of those other carriers have the favorable terms Intrado seeks here – that is, interconnection within, and direct trunking to, the other carrier's network. This is not just a disadvantage, it is impermissible discrimination. Indeed, if the parties had voluntary negotiated such discriminatory terms, the Department would have to reject them under section 252(e)(2)(A)(i) (listing as grounds for rejection of a negotiated agreement a finding that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement.")

Second, carriers will also be disadvantaged because Intrado's proposal would remove those carriers' option – indeed, their existing contractual right – to send their 911 traffic to Verizon's selective routers. They would have no choice but to abandon their existing 911 call delivery arrangements and they would be forced to establish new direct trunking arrangements to take their traffic to at least two, and, at Intrado's discretion, additional, POIs on Intrado's network, regardless of how far those POIs are from the carriers' networks. And they would have to figure out how to sort their 911 traffic to the right PSAPs, because they would no longer be able to use Verizon's selective routers. Intrado cannot seriously claim that carriers will not be disadvantaged by having to establish, at their own expense, completely new 911 call delivery arrangements. Those carriers, like Verizon, have the right to engineer their networks as they see fit.

As for the disadvantages to the public in general, if Intrado cannot force all other carriers

into the direct trunking agreements it plans for the state, those carriers' customers' 911 calls will not reach Intrado-served PSAPs, as Verizon has explained. Intrado's only response to this serious public safety concern about dropped calls is that it plans to obtain other carriers' agreements to its burdensome proposal. (Intrado Ex. 1 at 46.) But planning to obtain such agreements does not mean that Intrado actually will be able to obtain them.

Contrary to Intrado's mischaracterization of Verizon's position, Verizon is not planning to use "transit arrangements" to send 911 traffic to Intrado from other carriers (Intrado Br. at 27-29.) Intrado wants to label other carriers' use of Verizon's selective routers as transit service, because Verizon has no legal obligation to provide transit service (but rather provides it voluntarily under its interconnection agreements). As such, Intrado concludes, "[a] service as important as 911 should not be relegated to 'voluntary' transit service arrangements that, in Verizon's view, it is under no obligation to provide." (Intrado Br. at 29.) Intrado is not fooling anyone by calling selective routing "transit service." Transit service is a specifically defined offering in Verizon's interconnection agreements, under which Verizon agrees to allow an originating carrier to send traffic through Verizon's tandems for delivery to a third party carrier with which the originating carrier has no direct connection. The transit provisions for local exchange traffic are completely separate from the 911 call delivery provisions in Verizon's interconnection agreements. In fact, the transit service provisions were removed from the Intrado/Verizon draft agreement under arbitration, because the parties agreed they were not relevant to Verizon's and Intrado's interconnection for 911 service; Verizon's template transit section provides for Verizon to carry traffic across its network from the contracting carrier to other LECs and wireless carriers and there will be no such traffic from Intrado in this case. Delivery of other carriers' 911 traffic is clearly not voluntary under any of Verizon's

interconnection agreements and would not be voluntary under Verizon's proposal here. On the contrary, Verizon has explicitly recognized its obligation, under section 271(c)(2)(B)(vii)(I) of the Act, to provide other carriers with nondiscriminatory access to 911 services. That access is provided today in most cases through Verizon's selective routers. (Verizon Ex. 1 at 44.) Intrado's proposal would remove this option for CLECs, disrupt Verizon's agreements reflecting this option, and thus compromise Verizon's ability to meet its obligation to provide nondiscriminatory access to 911 services. So Intrado, not Verizon, would leave delivery of third party carriers' 911 traffic to chance by stopping Verizon from accepting these carriers' 911 calls at its selective routers.

There is no reason for Verizon, other carriers, and the public to bear the risk and expense of Intrado's proposals, because those proposals are unlawful. Verizon has no obligation to interconnect within Intrado's network, so the Department must reject Intrado's proposal for Issue 1.

<u>ISSUE 2</u>: 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.)

As Verizon explained in its Initial Brief, inter-selective router trunking is trunking between the parties' respective selective routers. Such trunking allows transfer of calls between PSAPs when, for example, calls are initially directed to the wrong PSAP.

The parties do not disagree about the merits of selective router trunking – in fact, as Verizon's witnesses have testified, the interconnection between Verizon and Intrado for ***all*** 911 calls can and should be accomplished by means of trunking between selective routers. (Verizon Br. at 24-25; Verizon Ex. 1 at 33.) Their disagreements instead involve the details of Intrado's particular inter-selective routing proposal. As Verizon has explained, that proposal is

unacceptable for a number of reasons, chief among them that it assumes Intrado is entitled to designate POIs on its own network – which it is not, as Verizon explained in Issue 1, above. Intrado's proposal would, in addition, dictate what Verizon does on its own network on its side of the POI, contrary to settled law that the ILEC is entitled to engineer its own network as it seeks fit. (*See* discussion of Issue 5, below.) Intrado's proposal would also require an excessive level of dial plan information in the interconnection agreement that is not customary or appropriate. Instead, the dial-plan coordination is better left to the implementation efforts that are ordinarily undertaken by interconnecting carriers. (*See* Verizon Br. at 27; Verizon Ex. 1 at 35.) . Indeed, Verizon has stated that it is willing to provide to Intrado the same type of dial-plan information that it shares with other providers. (Verizon Br. at 26.) Dial-plan information is shared cooperatively among carriers today without prescriptive interconnection agreement requirements, allowing carriers to transfer 911 calls and associated data between and among 911 networks, and there is nothing in the record to suggest that the way in which Verizon shares dial-plan information today with other carriers – and proposes to share it with Intrado – is unworkable or otherwise inadequate.

Once again, Intrado can offer no legal authority to support its proposals – only vague, general citations that do not mean what Intrado claims they do. Intrado suggests that the FCC found in the *Virginia Arbitration Order* that more detail is better with respect to 911 interconnection arrangements, so the Department should adopt Intrado's more detailed proposals for inter-selective router arrangements. (Intrado Br. at 31.)

The *Virginia Arbitration Order* does not support Intrado's broad premise that more detail is necessarily better. That case involved competing language between Verizon and former MCI with respect to MCI's access to Verizon's 911 platform – not a request, like Intrado's here, for

Verizon to reconfigure its 911 platform. The FCC did not approve any 911-related language like Intrado proposes here. Rather, it considered the parties' respective proposals for particular matters (that are not at issue here) and found that MCI's specific, more detailed proposal was better than Verizon's specific, less detailed proposal and also noted that Verizon had expressed no substantive objection to MCI's proposals. (*Virginia Arbitration Order*, ¶¶ 660-61.) The Department must, like the FCC did, consider the specific details of the parties' respective proposals, not just pick the most detailed proposal – regardless of whether it would impose unlawful requirements upon the ILEC, as Intrado's plan would.

Intrado also erroneously claims that section 251(c)(5) supports its proposal to include an excessive level of dial plan information in the interconnection agreement. (Intrado Br. at 30-31.) Section 251(c)(5) requires "reasonable public notice" of changes in an ILEC's network that might affect the interoperability of the ILEC's network with interconnecting CLECs' networks, and it does not support Intrado's proposal.

First, call transfer routing capability between PSAPs doesn't even involve section 251(c) interconnection, so section 251(c)(5) cannot apply to Intrado's requests relating to dial plans, and cannot require any dial plan terms in the section 251(c) interconnection agreement Intrado seeks here.[14] Neither the *FCC Interoperability Order* Intrado cites nor anything else indicates that section 251(c)(2)(5) contemplates dial plan information in interconnection contracts, let alone the excessive level of information Intrado seeks.[15] The passage from the *FCC Interoperability Order* Intrado cites states "[w]e define the term 'interoperability' as 'the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that

[14] *Ohio Embarq/Intrado Order* at 8, 36),

[15] Intrado Br. at 31, *citing Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 178 (1996) ("*FCC Interoperability Order*").

has been exchanged.'" This does not support Intrado's position that the POI for inter-selective router trunking must be on its network, nor does it support Intrado's proposal for how information about dial-plans should be exchanged. Section 251(c)(5) applies to changes in an ILEC's network that might affect its ability to interconnect with CLEC networks – not to interconnect PSAPs.[16]

Second, even if section 251(c)(5) did apply (and it does not) Intrado is not seeking public notice of anything – it is, instead, seeking to impose, in a bilateral contract, ongoing notice requirements with respect to changes in dial plans (as well as substantive requirements to undertake particular activities to support Intrado's proposed call transfer methodology and to require the parties to maintain inter-911-selective router dial plans). (Verizon Br. at 25-26; Intrado proposed 911 Att., § 1.4.4.)) As Verizon has stated, it will provide dial plan information to Intrado just as it does to other providers, but Intrado is not entitled to special private notice of dial-plan changes under section 251(c)(2) or any other provision. Intrado's proposed, excessive level of dial-plan detail in the interconnection agreement is not customary, appropriate, or workable and would impose requirements upon Verizon (including maintenance of dial plans) that have no basis in the law. Therefore, Intrado's specification of the methods for transfer of 911/E-911 calls should not be included in the agreement.

[16] Intrado's suggestion that the West Virginia Commission and the Staff of the Illinois Commerce Commission support its position is also off-base. (Intrado Br. at 34.) While allowing for some dial-plan language to remain in the interconnection agreement, the West Virginia Commission ruled that Intrado is not entitled to 251(c) interconnection for inter-selective routing arrangements. *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*"), at 13 (Nov. 14, 2008), *aff'd by* Commission Order (Dec. 16, 2008) ("*W.V. Order*"). And, as discussed above, the ALJs in the Intrado/AT&T arbitration in Illinois concluded that Intrado is not entitled to 251(c) interconnection at all, so there was no reason to reach the parties' disputes over contract language. (*Ill. Proposed Order* at 20-21.)

<u>ISSUE 3</u>: WHETHER FORECASTING REQUIREMENTS PROVISIONS SHOULD BE RECIPROCAL. (911 Att. § 1.6.)

Intrado argues that "[f]orecasts are integral to ensuring that the Parties' networks meet industry standards and are properly sized to accommodate both immediate and anticipated growth, without experiencing implementation delay." (Intrado Br. at 35.) From this generally indisputable proposition, Intrado draws the conclusion that the Department should approve its *particular* proposal for forecasting obligations to "apply equally to both parties." (*Id*.) But neither point supports the adoption of Intrado's language.

First, that language would require Verizon to make forecasts that Verizon repeatedly has explained it cannot produce with any accuracy, because such forecasts depend on knowledge that Verizon does not have, including the level of Intrado's potential success in the marketplace. (Verizon Ex. 1 at 37.) Requiring Verizon to make forecasts that it knows it cannot make accurately does not promote the proper sizing of the parties' networks, but undermines it, and would impose a needless burden upon Verizon. To the extent Intrado signs up PSAPs as customers, those PSAPS will have the best knowledge of call volumes from Verizon's serving area to the PSAP. Based on these facts, the West Virginia Commission rejected Intrado's reciprocal forecasting proposal, correctly concluding that the Intrado-served PSAPs, which have a business relationship with Intrado, will be better positioned than Verizon to assess call volumes to them.[17]

Second, forecasting obligations already ***do*** apply equally to both parties under language to which the parties have already agreed, when it makes ***sense*** for those obligations to apply

[17] *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*"), at 12-13 (Nov. 14, 2008), *aff'd by* Commission Order (Dec. 16, 2008) ("*W.V. Order*"), at 3-4.

equally.[18] Intrado's insistence on forecasts that Verizon is ill-equipped to produce (and that Intrado can better undertake), let alone produce accurately, is inexplicable. The Department therefore should reject Intrado's proposed language.

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

Intrado argues that language requiring it to provide certain notices and information to Verizon when Intrado seeks to interconnect with Verizon should be reciprocal. (Intrado Br. at 37.) Intrado contends that it will require the same notices and information in areas where Intrado Comm provides 911 service to a PSAP. (*Id.*) Intrado's argument is based on the false assumption that Verizon can be forced to interconnect with Intrado at POIs on Intrado's network. Verizon cannot be compelled to interconnect to points on Intrado's network, as discussed in Issue 1 above. Because Intrado's proposal to make Verizon's proposed section 1.5 of the 911 Attachment reciprocal necessarily assumes Verizon must interconnect to points on Intrado's network, the Department must reject this proposal, as it must Intrado's proposal for Issue 1. (Verizon Ex. 1 at 39.) For this reason, and the reasons more fully described in Verizon's Initial Brief (at 28-29), 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. (Verizon Br. at 28; Verizon Ex. 1 at 39.)

[18] Agreed-upon language in 911 Attachment Section 1.5.5 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.

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

A. Intrado may not, under the guise of section 251(c), dictate the architecture of Verizon's network.

Intrado's proposal for Issue 5, along with its proposal for Issue 1, regarding POI placement, constitutes Intrado's network architecture proposal. Intrado's contract language would require Verizon to not only take its end users' 911 traffic to multiple, distant POIs on Intrado's network, but would dictate how Verizon gets it to those POIs. Specifically, Intrado would require Verizon to establish, at Verizon's expense, two direct trunks from each of Verizon's end offices in areas where Intrado serves the PSAP, and would force Verizon to bypass its own selective routers and to develop, again at Verizon's expense, an entirely new call-sorting mechanism. (*See* Intrado Ex. 1.0, Hicks DT at 32-34, 39, 42-43; Verizon Ex. 1 DT at 5, 13-14, 55-57.) Intrado has not identified the location of the POIs it may establish or the total number it plans to establish, so Intrado's proposal gives it *carte blanche* to impose unlimited costs upon Verizon, as well as other carriers. As Verizon has explained, Intrado's proposal would require carriers that connect to Verizon's selective routers today to dismantle those interconnection arrangements and instead direct trunk their traffic to Intrado using some unknown, alternative form of call sorting. (*See* Verizon Br. at 33-38.)

As Verizon explained in its Initial Brief, Intrado has not supported and cannot support this unlawful, expensive, and anticompetitive direct trunking proposal. 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. So Intrado's proposal for Verizon to establish direct trunks to those POIs on Intrado's network and to implement call-sorting capability in its end offices seek to dictate how Verizon engineers its own network on its own side of the POI.

Indeed, no state commission has endorsed Intrado's unworkable proposal. The Ohio Commission has already rejected Intrado's direct trunking proposal three times, confirming that there is nothing that would justify one carrier dictating to another carrier how it transports traffic *within its own network.* In Intrado's arbitration with CBT, the Ohio Commission concluded that 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." (*CBT/Intrado Order* at 14.) In Intrado's arbitration with Embarq, the Commission, likewise, found that "Embarq is responsible for routing its end users' 9-1-1 calls on its side of the POI." (*Embarq/Intrado Order*, at 33.) And in Intrado's arbitration with AT&T, the Commission once again ruled that the ILEC "is not required to establish direct trunking to Intrado's selective router(s) where Intrado is the 911 provider to a PSAP. AT&T will, therefore, be able to engineer its network on its side of the POI, ***including the use of its selective router(s)***, for delivery of its end users' 911 traffic to Intrado's selective router."[19] Similarly, the West Virginia Commission rejected Intrado's proposals, noting that "Verizon is entitled to engineer its system on its side of the point of interconnection in the manner it deems to be the most efficient and secure." [20]

It is well-settled that Verizon, not Intrado, has the right to decide how best to configure its own network. Intrado has presented nothing in this arbitration to justify a departure from this principle. The Department must, therefore, reject Intrado's direct trunking/call sorting proposal,

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[19] *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 AT&T*, Arbitration Award, Case No. 07-1280-TP-ARB (March 4, 2009) , at 32 (emphasis added).

[20] See *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 to VZ Ex. 1 as Ex. 7)., at 20 (Nov. 14, 2008), *aff'd by* Commission Order (Dec. 16, 2008) ("*W.V. Order*") (attached to VZ Ex. 1 as Ex. 8).

which would impermissibly transfer to Intrado Verizon's right to manage its own network.

B. Verizon's 911 Call Delivery Arrangements Provide No Basis for Allowing Intrado to Engineer Verizon's Network.

Intrado does not deny that its proposal would dictate how Verizon engineers its own network. (*See* Intrado Br. at 39.) Intrado instead argues that "Verizon imposes similar requirements on competitors when it is the designated 911/E-911 service provider," so, by Intrado's logic, Intrado should be able to impose direct trunking requirements on Verizon. (*Id*.) Once again, Verizon does not require other carriers to direct trunk their traffic to Verizon's selective routers, but in interconnection agreement negotiations, these carriers typically agree to these customary arrangements for delivery of 911 calls to the appropriate PSAPs. And again, these agreements are always made, as they must be, in the context of the federal requirement for the POI(s) to be on Verizon's network. There is no reciprocal requirement for Verizon to deliver 911 calls to other carriers' networks, and the Department cannot create one just for Intrado.

As Verizon discussed above, there are no service quality or industry standards that support or address Intrado's specific interconnection proposal. Verizon is not, in any event, stopping Intrado from using any kind of configuration that Intrado believes is the best approach for Intrado's own network, but Verizon has no obligation to pay for it.

Nor does Verizon have any obligation to abandon use of its selective routers. These selective routers are part of Verizon's network, on Verizon's side of the POI(s) (regardless of whether those POIs are on Verizon's network or Intrado's).

Intrado complains that use of Verizon's selective routers introduces an unnecessary stage of switching in transmitting 911 calls to Intrado and undermines network reliability. But, as Verizon has shown, selective routing is the *only* industry-accepted means available today for 911 calls to be routed to the correct PSAP. Selective routing 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.* (Verizon Ex. 1 at 59-60.) If these conditions are not present, then Intrado's proposal is certain to undermine the network reliability it claims to be promoting.

Moreover, Verizon's use of a common trunk group, instead of multiple dedicated trunks, is not "inconsistent with NENA recommendations and industry practice," as Intrado charges. (Intrado Br. at 40-41.) As Verizon's witnesses have pointed out, and as Verizon discussed under Issue 1 here, Verizon's existing practice of sending 911 traffic over a common trunk group to PSAPs is, in fact, the industry standard and NENA does not recommend anything different. In any event, as Verizon has pointed out numerous times, this is not a proceeding to evaluate the best methods of 911 provisioning for Massachusetts or to determine how Intrado's unbuilt network might satisfy any industry or 911 Board standards. Those kinds of decisions can be made only through the processes established in Massachusetts's 911 statutes and regulations, with the participation of all affected entities, not in this arbitration. If Intrado wins a 911 contract for Intrado, the State 911 Board will review each aspect of Intrado's network against the complex, detailed 911 regulations governing 911 systems in Massachusetts. Even if the Department had the information to perform this kind of comprehensive evaluation in this arbitration (and it does not), it would not be appropriate.

Intrado cites some Illinois Commission Staff testimony from its arbitration with Verizon in Illinois to try support its case for requiring Verizon to direct trunk 911 calls to Intrado's network. (Intrado Br. at 38-39.) As an initial matter, the substantive issues in Verizon's arbitration with Intrado in Illinois (like the issues in Intrado's arbitration with AT&T in Illinois) will likely become moot if the Illinois Commission approves its ALJs' ruling that the Commission lacks the jurisdiction to consider Intrado's interconnection request, because Intrado's 911 services do not entitle it to section 251(c) interconnection. (*See Ill. Proposed*

Order, at 18.)

Intrado also neglects to point out that the Illinois Staff correctly and unambiguously concluded that (if the arbitration proceeds), interconnection must occur *at Verizon's selective routers on Verizon's network.*[21] So the Illinois Staff did *not* support Intrado's recommendation for Verizon to direct trunk its traffic to Intrado's selective routers on Intrado's network. And to the extent the Illinois Staff recommended any direct trunking from Verizon's end offices to POIs on Verizon's network, that recommendation was not clearly defined and its feasibility was not examined; Verizon would have opposed this aspect of the Staff's recommendation if the parties had not agreed to stay the proceeding pending a Commission decision on the ALJ's recommendation to dismiss Intrado's arbitration with AT&T. The Illinois Staff testimony, in any event, provides no basis for this Department to depart from the well-settled proposition that each carrier is entitled to manage its own network.

C. There Is No Law Mandating Adoption of Intrado's Direct Trunking Architecture.

Intrado attempts to support its direct trunking/new call sorting proposal with the same kinds of arguments it used with respect to its POI placement proposal for Issue 1. Intrado claims that "the equal in quality and non-discrimination requirements of the Act mandate the use of dedicated direct trunking" (Intrado Br. at 43), and that the Department has no choice but to adopt Intrado's proposal because it is technically feasible. (Intrado Br. at 45.) These arguments are just as frivolous as they were when Intrado made them in the context of Issue 1.

As an initial matter, Intrado's legal arguments rest on its factual allegations that Verizon's refusal to direct trunk 911 calls to Intrado's network would "relegate Intrado Comm to a different and lesser from of interconnection" than Verizon provides to itself, resulting in Verizon's end users receiving inferior 911 service when they call Intrado-served PSAPs than

[21] Direct Testimony of Jeffrey H. Hoagg, Principal Policy Advisor, Ill. Comm. Comm'n, at 10 (Dec. 19, 2008).

when they call Verizon-served PSAPs. (Intrado Br. at 45.) There is nothing in the record to support this ridiculous premise. As Verizon has explained, it uses common trunks today to carry calls to PSAPs, with no reliability issues (and Intrado itself recommends inter-selective-router trunks in the context of Issue 2), so there is no reason to believe that reliability issues will suddenly arise if Verizon continues to use its common trunks to carry calls if it is (unlawfully) directed to take its 911 calls to POIs on Intrado's network. Unlike Intrado – which cannot provide any assurance that 911 calls won't be dropped if other carriers cannot send their 911 traffic to Verizon's selective routers anymore – Verizon would do nothing to compromise the security and reliability of the 911 network. Aside from the flaws in the factual premise of Intrado's "equal-in-quality" argument, Intrado cannot rely on section 251(c)(2) to try to obtain a section 251(c) interconnection arrangement that is different from the arrangements in every other such interconnection arrangement Verizon has in Massachusetts. The quality of interconnection that Verizon has offered to Intrado is exactly the same as the quality of interconnection Verizon provides to every Massachusetts CLEC, which satisfies Verizon's obligations under the section 251(c)(2). Verizon has no obligation to provide Intrado arrangements that are more favorable than it offers any other carrier.

Intrado's reliance on the Communications Act's section 202 for its claim of discrimination as between Verizon end users served by Intrado's PSAP customers and those served by Verizon's PSAP customers also makes no sense. Section 202 is enforced by the FCC, not state commissions. In any event, as noted, there is absolutely no evidence that Verizon's end users who make 911 calls to Intrado-served PSAPs will be treated any differently by Verizon than those who make 911 calls to Verizon-served PSAPs.

Intrado's technical feasibility argument deserves no more serious consideration than any

of its other legal arguments. Under Intrado's unique view of the law, a requesting carrier may obtain any interconnection arrangements it wants, regardless of the expense to the ILEC, unless the ILEC proves that the proposed arrangements are technically infeasible. (Intrado Br. at 45-46.) No such law exists, and Intrado hasn't cited any. Nothing requires Verizon to modify its network in any way Intrado wishes, regardless of the specific interconnection requirements in section 251(c), under which Intrado has sought interconnection. In fact, the *Local Competition Order* paragraphs Intrado cites occur within the FCC's discussion of section 251(c)(2)'s obligation for "incumbent LECs to provide interconnection *within their networks*." (*Local Competition Order*, ¶ 192 (emphasis added).) As Verizon has explained, technical feasibility could only become an issue if Verizon and a requesting carrier disagreed about the technical feasibility of interconnection at a particular point *within Verizon's network*. (47 U.S.C. § 251(c)(2)(B).)

Moreover, as the FCC has made clear – among other places, in the very section of the *Local Competition Order* Intrado misrepresents as supporting its technical feasibility argument – the requesting carrier is responsible for the costs of interconnection, and must pay the ILEC for any expensive form of interconnection it requests: "Of course, a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[22] 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.

[22] *Local Competition Order* at ¶ 199; *see also* ¶¶ 200, 209, 225, 552.

D. Intrado's Direct Trunking Proposal Is Vague, Risky, and Unworkable.

Intrado criticizes Verizon for focusing on the concept of "line attribute routing" in its testimony. (Intrado Br. at 42.) Line attribute routing was a concept dreamed up by Intrado to try to convince state commissions its direct trunking proposal would work. It was never implemented anywhere and was not materially different from the obsolete class marking approach occasionally used as a temporary accommodation some 20 years ago before selective routing was universally deployed. (Verizon Ex. 1 at 38-39.)

Intrado's line attribute routing proposal has been criticized by industry groups elsewhere (*see* Verizon Br. at 41-42), so Intrado has apparently stopped proposing it (which Verizon could not have known at the time it submitted its testimony). Verizon's pre-filed testimony, however, acknowledged that Intrado's proposed contract language is silent with respect to how Verizon is expected to route 911 calls to the right PSAP if it (and other carriers) must bypass Verizon's selective routers, as they would be required to do under Intrado's direct trunking proposal. (Verizon Ex. 1 at 45-46.)

As Verizon explained in its Initial Brief (at 35-37), Intrado's new strategy of declining to specify any method at all for implementing its direct trunking proposal (Intrado Ex. 1.0 at 38-39) does not make Intrado's case any more credible. Whether Intrado proposes line attribute routing or nothing at all for routing 911 calls as part of its direct trunking proposal, there is no existing, reliable call-sorting alternative to selective routing. (Verizon Ex. 1 at 46-47.)

Intrado advises the Department that it should not concern itself with the call routing aspect of Intrado's direct trunking approach, but should simply leave it up to Verizon to figure out – and if Verizon is unable to do so, Intrado's solution is an action for breach of contract. (Intrado Br. at 42-43.) A breach of contract action, of course, will not help individuals whose 911 calls do not reach the right PSAP. Intrado's willingness to take a cavalier stance toward critical 911 call routing issues is particularly ironic, given its heavy reliance on (misguided)

policy arguments to supplant federal law. Even if there were any law to support Intrado's direct trunking proposal (and there is not), the Department should reject it as unworkable and contrary to sound policy.

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's Initial Brief (at 42) already thoroughly addressed the arguments advanced by Intrado's initial brief with respect to this issue, so there is no need for any further rebuttal here. Verizon's proposed language for section 1.1.1 of the 911 Attachment accurately describes Verizon's network arrangements and capabilities and should be adopted.

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.)

Intrado's position on Issue 7 is another appeal to change the law to suit Intrado. Intrado concedes that "[w]hen the ALI database function is provided as a stand-alone service, it is viewed as an information service," but despite this argues that in Intrado's planned 911 service, it is so intertwined with the switching and transmission components of Intrado's offering that one component would be "useless" without the others. (Intrado Br. at 49.) Intrado would thus treat the ALI (automatic location identification) database function as a telecommunications service appropriate for inclusion in a section 251/252 agreement, rather than an information service that does not belong in such an agreement.

There is no basis for Intrado's position. The FCC is fully aware of the interplay among the 911 database function and 911 call routing and switching and nonetheless has determined explicitly that the provision of caller location information to a PSAP is an information service.[23]

[23] *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) ("*ALI Information Services Order*"), at ¶ 17.

The FCC's *ALI Information Services Order* recognized that "E911 services enable PSAPs and emergency service providers to retrieve information from the BOCs' automatic location identification databases. [note omitted] The BOCs may also permit PSAPs or other emergency agencies to store information regarding PSAP assignments and, in some instances, individual telephone subscribers in these databases. [note omitted] Because the BOCs' E911 services offer the capability for storing and retrieving information, they are information services, except to the extent they are used for the management, control, or operation of telecommunications systems or the management of telecommunications services." (*ALI Information Services Order* at ¶ 17.) The ALI database is not used for the management, control or operation of telecommunications systems or the management of telecommunications services. Rather, the ALI database, as described in testimony, is a "storage and retrieval system."

Intrado's proposed ALI steering language is therefore not properly a subject for the interconnection agreement under arbitration. Moreover, Intrado's claim that absent its proposed language, PSAPS with different service providers would be unable to transfer calls to one another is simply incorrect, as Intrado and Verizon already have an ALI-related agreement that provides Intrado with everything it needs to conduct its business with respect to ALI database arrangements between the parties. (*See* Verizon Br. at 44.)

<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? (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").)

Verizon's Initial Brief (at 44-47) thoroughly rebuts each of Intrado's arguments about definitions, so there is no need to further address the parties' disputes here. The Department should adopt Verizon's proposed definitions because they accurately reflect the structure of

Verizon's network and the location and operation of Verizon's selective routers. Verizon's definitions add detail that more clearly describes the obligations, rights and responsibilities of the Parties under the agreement. They will, therefore, reduce the likelihood of future disputes between the parties that may arise as a result of definitions, like Intrado's, that are vague and overly broad. (Verizon Ex. 1 at 69-74.)

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

As noted in Verizon's initial brief, Verizon already has offered appropriate interconnection agreement language providing reciprocity, in new Section 2.6 of Verizon's proposed agreement.[24] Intrado's argument on reciprocity, instead, is an excuse to try to put inappropriate qualifying language in the agreement that the direct 911 call delivery arrangements must be authorized by the PSAP. Indeed, Intrado claims to remain "concerned" that Verizon's language "would still allow [Verizon] to bypass [Intrado] and deliver 911/E-911 calls directly from its end offices to a PSAP served by Intrado Comm." (Intrado Br. at 52-53). However, 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 Intrado/Verizon agreement under arbitration. (Verizon Ex. 1 at 75; Verizon Br. at 47.) Intrado's other objections to Verizon's proposed Section 2.6 – that the provision is "not exactly reciprocal and contains additional limitations" - are makeweight, as an even cursory review of the actual language demonstrates.

[24] New Section 2.6 reads 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 Verizon Ex. 1 at 75.

<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? (911 Att. §§ 1.3, 1.4 and 1.7; Pricing Att. §§ 1.3, 1.5 and Appendix A.)

<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. (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.)

A. Intrado's Proposed Rates Are Not Warranted.

To support its rate proposals, Intrado relies on the *Ohio Intrado/CBT Order*, where, Intrado claims, the Commission determined that Intrado's proposed port or termination rates are "reasonable." (Intrado Br. at 56.) Intrado's claim is not supported by the facts.

The Ohio Commission didn't determine that Intrado's proposed rates for trunk ports (the only rates at issue in the CBT case) were "reasonable." Instead, it found that there was insufficient evidence in the record to answer the question as to whether Intrado's rates were reasonable. (*CBT/Intrado Order*, at 21.) Based on the "limited record," the Commission, therefore, determined that Intrado's rates appeared to be "not unreasonable," *and approved these rates for both Intrado and Cincinnati Bell* to the extent either party purchased trunk ports from the other. (*Id*. at 22.) Further, the Commission's rulings were based on its analysis that when Cincinnati Bell interconnected with Intrado to get Cincinnati Bell's 911 calls to an Intrado-served PSAP, that was *not a section 251(c)(2) interconnection*, but an arrangement under section 251(a) of the Act – and an arrangement under which Cincinnati Bell was willing to take its traffic to Intrado. Because Cincinnati Bell did not propose a trunk port rate, the Commission found it reasonable to apply Intrado's rates to both parties. (*Id*. at 22.)

As Verizon explained in its Initial Brief, it has not sought interconnection with Intrado and has not agreed to take its traffic to Intrado; Intrado is instead seeking to force Verizon to interconnect under section 251(c). (Verizon Br. at 3.) Under section 251(c), Intrado must interconnect with Verizon on Verizon's network (which is not a requirement under section 251(a)). In short, there is no reason for trunk port charges here, because Verizon is not obligated, under section 251(c), to trunk its traffic to Intrado's network to interconnect on that network. Even aside from that, the Ohio Commission's solution was to order *rate parity*, and there is absolutely nothing in this record to show that Intrado's proposed port rates (if that is what they are) are comparable to any rates that Verizon charges other carriers to connect to its network.

In addition, as Verizon has pointed out, Intrado has supplied no cost or other justification whatsoever to support its proposed rates. (Verizon Br. at 52; Verizon Ex. 1 at 81-82.) So even if it were appropriate for Intrado to apply some rate (and it is not, because Verizon is not required to interconnect on Intrado's network), Intrado's particular "port" and "termination" rates (which are not designated as such in Intrado's ambiguous pricing attachment) would have to be rejected as completely arbitrary.

The Department should find, as the West Virginia Commission did, that "there will be no Intrado charges to Verizon" because the POI must be on Verizon's network. (*W.V. Award* at 24, 15.)

B. References to Verizon Tariff Rates Are Reasonable.

Intrado complains that Verizon's language would allow it to impose unspecified tariff rates for interconnection-related services. (Intrado Br. at 53.) Intrado also argues that ILECs' rates for interconnection and unbundled network elements must meet the standards reflected in section 252(d)(1) of the Act, and while Intrado recognizes that there may be non-252(d)(1)

services that it may purchase from Verizon, it asserts those services and the pricing of those services must be set forth in the interconnection agreement. (Intrado Br. at 54.)

Intrado's complaints about general references to tariff rates in the interconnection agreement are unfounded. The limited products and services that Verizon is required to provide pursuant to section 252(d)(1) standards in the Act – that is, pursuant to the FCC's Total Element Long-Run Incremental Cost ("TELRIC") methodology, are already delineated (along with appropriate references to Verizon's tariffed rates) in the Appendix A to the Pricing Attachment. (Verizon Br. at 49.) And as Verizon explained in its initial brief, generic tariff references are a standard part of Verizon's Department-approved interconnection agreements with Verizon and have not caused the problems Intrado claims they will. (*See* Verizon Br., at 49.)

Indeed, Intrado's objection to those references is merely another attempt to gain a competitive advantage over other carriers. After all, Intrado is not required to order any service from Verizon, and those services not already priced at TELRIC rates are, by implication, competitive services – Intrado is free to choose another supplier. Moreover, Intrado has recognized that those charges would continue to be just and reasonable; as Mr. Hick's acknowledged, the Department would "make certain that [tariffed rates] were reasonable and fair. (Tr. 35.) As Intrado's witness Currier acknowledged, Verizon maintains carrier-to-carrier Intrado's opposition to tariff references appears to be rooted in the objective of gaining a competitive advantage over all other carriers that must abide by Verizon's tariffs. Indeed, Intrado suggests that it is entitled to TELRIC pricing for anything it might claim to need for "interconnection." As Verizon has explained, it must price at TELRIC only the specific elements the FCC has identified for such pricing. These elements, as well as appropriate references to Verizon's tariff rates, are already included in Appendix A to the Pricing

Attachment. (Verizon Br. at 49; Verizon Ex. 1 at 76-77.)

Under the Pricing Attachment, Verizon must charge Intrado the same rates as it does to all other CLECs that take the services to which Intrado subscribes or to which Intrado may someday subscribe. There is nothing unfair or unworkable about including in Intrado's interconnection agreement the same pricing terms and tariff references that appear in virtually identical form in Verizon's other interconnection agreements the Department has previously approved

For all of these reasons, the Department should reject Intrado's arguments regarding generic tariff references in the interconnection agreement.

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.)

Intrado opposes capping its rates at the reasonable, Department-approved rates of Verizon, thus leaving Intrado free to gouge Verizon with high prices. (Intrado Br. at 59.)

Intrado's cites from three other states are not persuasive authority for the Department. As an initial matter, one of the three states – New York – decided a later case in which it adopted a rate parity proposal like that Verizon has proposed here: "We find Verizon's proposal to be reasonable, as it is premised on the established practice we employ."[25] And as Verizon has pointed out, rate parity proposals are common throughout the country in the reciprocal compensation and access contexts.

If Intrado plans to charge rates higher than Verizon's rates for comparable services – which, unlike Intrado's rates, have been subject to thorough Department scrutiny – it should be required to justify those rates with cost data. There is certainly no basis in this record upon

[25] *Joint Petition of AT&T Comm. et al. Pursuant to Section 252(b) of the Telecom. Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc*, Order Resolving Arbitration Issues, at 86 (N.Y. P.S.C. July 30, 2001.)

which the Department would determine that Intrado's rates are just and reasonable. Accordingly, Verizon's proposal allows Intrado to charge Verizon rates above those Verizon charges for comparable service, so long as 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.)

Intrado argues that its proposed language in §§ 1.7.2 and 1.7.3 of the 911 Attachment would ensure that each party's ability to bill the other would be limited by the interconnection agreement and the rates in the Pricing Attachment, to the extent such requirements or rates apply. (Intrado Br. at 60-61.) Yet, Intrado's proposed language for sections 1.7.2 and 1.7.3 of the 911 Attachment would undercut the parties' agreement not to bill for transport of 911/E-911 calls, and it erroneously assumes adoption of Intrado's network architecture proposal. Specifically, Intrado's proposed language improperly contemplates that Intrado could bill Verizon for interconnection or facilities for transport of 911/E-911 calls to Intrado's network. As discussed in Verizon's initial brief (at 51-52), any such charges are inappropriate, and certainly Intrado's unexplained and unsupported "interconnection" charges are inappropriate, as discussed in Issues 10 and 11. Therefore, the Department should reject Intrado's proposed language in §§ 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.)

Intrado contends that its proposed language is designed to ensure that neither party may operate outside Department-approved rates or regulations of their retail services to PSAPs. (Intrado Br. at 62.) While Intrado argues that its language is not an attempt to restrict Verizon's

ability to charge PSAPs for services Verizon will continue to provide, it then goes on to argue at length why it believes Verizon will not be providing services to any PSAPs to which Intrado also provides services. (Intrado Br. at 62-63.) Indeed, in a footnote (note 304) accompanying this assertion, Intrado cites to a Florida proceeding in which Intrado sought a declaratory order that neither Intrado nor PSAPs would have an obligation to pay the ILECs' tariffed 911 charges when Intrado served the PSAP. There was no dispute in that case about the obvious fact that the law does not permit carriers to charge for services they don't provide; instead, Intrado's objective to deny other carriers compensation for services provided to Intrado-served PSAPs was clear to the intervenors and the Florida Commission. As the Commission stated in denying Intrado's request:

> Intrado either assumes that once it becomes the primary E911 provider to a PSAP, all ILEC 911 services to that PSAP will necessarily cease or it fails to consider the possibility that the ILECs may have to continue to provide certain ancillary 911 services to Intrado or to the PSAP in order for Intrado's primary E911 service to properly function, for which the ILECs are entitled to compensation pursuant to their tariffs. AT&T provided four examples of when it would arguably have to continue to provide compensable 911 service to PSAPs when Intrado is the primary E911 provider. Intrado's Response to AT&T's Motion to Dismiss and Response is silent with regard to that assertion.[26]

Thus, despite its protestations, Intrado's proposed language is designed to do exactly what Intrado asked the Florida Commission to do and what the Florida Commission explicitly declined to do. The Department, too, should reject Intrado's position that there is never any reason for an ILEC to continue charging a PSAP for services the ILEC continues to provide when Intrado serves the PSAP. Intrado's proposed language is not trying to state the obvious, benign principle that Verizon may not charge for services it is not providing; Intrado is instead

[26] *See* Verizon Ex. 1 at 93, citing *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Comm. Inc.*, Order Denying Amended Petition for Declaratory Statement, Order No. PSC-08-0374-DS-TP, at 14 (Fla. P.S.C. June 4, 2008).

trying to prevent Verizon from charging PSAPs (or Intrado) for services Verizon may still provide to PSAPs, even when a PSAP is an Intrado customer for other services. The Department should reject Intrado's attempt to do so, just as the Florida and West Virginia Commissions did. (*W.V. Arb. Award* at 28 n. 12.)

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 support of its argument that it have the right to renegotiate the agreement to expand it to cover not only 911 calls, but all types of traffic carried by CLECs, Intrado argues: "This approach would save the Parties and the Commission the time and energy of renegotiating and re-litigating provisions that have already been resolved by the Parties." (Intrado Br. at 65.) This argument is misleading. Intrado is seeking to retain the benefit of any provisions it already obtained through negotiation or arbitration associated with 911/E-911 calls and then *add* to them new provisions associated with exchange of traffic *other than* 911/E-911 calls, so Intrado's argument about re-litigation of the same provisions does not make sense. Consistent with the FCC's § 252(i) adoption rule, 47 CFR § 51.809, which prohibits CLECs from being able to "pick-and-choose" favorable contract terms and conditions, the Department should find that, if Intrado wishes to greatly expand the scope of the agreement, it should terminate the agreement and negotiate an entirely new agreement. (*See* Verizon Ex. 1 at 95.)

As Verizon observed in its Initial Brief, 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. (Verizon Br. at 57; Verizon Ex. 1 at 95.) In short, 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. The parties negotiated this agreement based on the limited nature of Intrado's

proposed business plan to provide 911 network services to PSAPs. If Intrado wishes to greatly expand the scope of the agreement, it should negotiate a new agreement in which all of the provisions 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 reject Intrado's proposed language in section 1.5 of the General Terms and Conditions, as the West Virginia Commission did. (*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)

Intrado is simply incorrect in its suggestion that inclusion of the phrase "a caller" is an inappropriate restriction, and one "inconsistent with the types of 911/E-911 calls that PSAP customers expect to be able to receive from their 911 service provider." (Intrado Br. at 65-66.) On the contrary, "a caller" precisely describes the entity calling 911. As described in Verizon's initial brief (at 67-68), 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. (VZ Ex. 1 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 its Initial and Reply Briefs, Verizon asks the Department to adopt its positions and associated contract language with respect to all the issues in this arbitration.

Respectfully Submitted,

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Dated: March 12, 2009