

**Before the  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Petition of Intrado	)	
Communications Inc. for Arbitration	)	
Pursuant to Section 252(b) of the	)	Case No. 08-537-TP-ARB
Communications Act of 1934, as amended,	)	
to Establish an Interconnection Agreement	)	
with Cincinnati Bell Telephone Company	)	

**APPLICATION FOR REHEARING OF  
CINCINNATI BELL TELEPHONE COMPANY LLC**

Cincinnati Bell Telephone Company LLC (“CBT”) hereby requests rehearing of the Commission’s October 8, 2008 Arbitration Award in this proceeding with respect to Issue 6. The Commission’s ruling is unlawful and unreasonable because: 1) it erroneously stated that, when CBT interconnects with Intrado to deliver 911 traffic to Intrado’s selective router, such interconnection would be pursuant to § 251(a) of the Telecommunications Act, not § 251(c); and 2) in the alternative, if such interconnection would be pursuant to § 251(a) of the Act, the Commission has no authority to establish rates for such an interconnection agreement through arbitration.

Respectfully submitted,

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## INTRODUCTION

Issue 6 involved Intrado's attempt to charge CBT for interconnection trunk ports on Intrado's selective router. In its ruling on Issue 6 in this arbitration, the Commission determined that Intrado had the right to charge CBT for interconnection trunk ports pursuant to § 251(a) of the Telecommunications Act:

Additionally, the Commission has previously determined that interconnection for the delivery of an ILEC customer's 911 call to a PSAP served by Intrado falls under the general requirement to interconnect imposed on carriers by Section 251(a), rather than the ILEC-specific requirements of Section 251(c).<sup>6</sup> Under Section 251(a) of the Act, the terms, conditions and pricing of trunk side ports (the only services whose prices are in dispute) are open to negotiation between the parties. However, because CBT has not proposed rates that would be applicable to its interconnection trunk side ports under Section 251(a), the only rates appearing in the record are those of Intrado. Because there is nothing in the record to indicate that these rates are unreasonable and CBT has indicated a desire for reciprocity with regard to charging for trunk side ports, the Commission finds that Intrado's rates for trunk side ports are appropriate for both parties to the extent that the interconnection trunk ports are purchased under Section 251(a). Therefore, the parties are instructed to charge each other the same rate for each trunk side port purchased under Section 251(a), based on the rate proposed by Intrado.

<sup>6</sup> See, *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq, Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 07-1216-TP-ARB (Arbitration Award issued September 24, 2008).

Arbitration Award, p. 22. CBT disagrees that interconnection between CBT and Intrado for the purpose of CBT delivering 911 traffic to Intrado is subject to § 251(a) of the Act. However, if it is, then the Commission acted beyond its statutory authority in setting rates for a § 251(a) agreement through arbitration. If rates, terms and conditions are subject to negotiations under § 251(a), the Commission erred by imposing a rate on CBT through arbitration.

## ARGUMENT

CLEC<sup>1</sup> to ILEC interconnection agreements are governed by § 251(c) of the Telecommunications Act of 1996.<sup>2</sup> Section 251(c) is applicable whenever a competitor seeks to interconnect with an ILEC, regardless of who is providing service to whom. It is not the case (as the Commission suggests) that the competitor requests the exchange of traffic one way and the ILEC then requests the exchange of traffic the other way. The parties in this case have already agreed in § 3.2.2 of the Interconnection Agreement that the same POI that Intrado establishes on CBT's network may be used by CBT to send traffic to Intrado's network.<sup>3</sup> There is no need for a second interconnection arrangement or a different POI.

A POI is for the *mutual* exchange of traffic,<sup>4</sup> not a one-way arrangement, yet the Commission appears to envision that Intrado can pick an interconnection point for traffic it delivers to CBT, but that there would be a separate interconnection point where CBT would have to deliver its traffic to Intrado. The Act and the FCC's rules do not contemplate such separate interconnection points over the ILEC's objection. CBT is entitled to use the same POI that Intrado establishes within CBT's network as the location where CBT would deliver its traffic to Intrado. This is not only the law, it is what the parties have already actually agreed to do in § 3.2.2 of the interconnection agreement. Intrado can receive all 911 calls that are destined to its PSAP customers at the same POI at which it delivers traffic to CBT. Thus, there is no need for

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<sup>1</sup> Intrado is not even certified as a CLEC. As a competitive emergency telecommunications services carrier ("CETSC"), it cannot have any greater rights than a CLEC.

<sup>2</sup> 47 U.S.C. § 251(c).

<sup>3</sup> "CBT may use the same Interconnection Point(s) designated by INTRADO COMM to interconnect with INTRADO COMM's network."

<sup>4</sup> "Interconnection is the linking of two networks for the *mutual exchange* of traffic. 47 C.F.R. § 51.5 (definition of "Interconnection") (emphasis added); *First Report and Order*, ¶ 176.

CBT to seek interconnection with Intrado under § 251(a) or to establish a different POI on Intrado's network.

The Commission correctly determined that, *if* Intrado obtains a certification that would allow it to provide dial-tone services, interconnection with CBT for purposes of delivering 911 traffic to CBT would be under the auspices of Section 251(c). However, in deciding Issue 6 the Commission referred to its decision in the Embarq arbitration<sup>5</sup> that when Intrado is the 911/E-911 service provider, the incumbent must request interconnection with Intrado in order to terminate its traffic to a PSAP served by Intrado.<sup>6</sup> The Commission then determined that Intrado could charge CBT for interconnection trunk ports under § 251(a) of the Act when CBT interconnects to Intrado's network. CBT disagrees with that analysis because such an interconnection would still be between CBT as an ILEC and Intrado as a CESTC. After all, Intrado requested interconnection with CBT and pursued this arbitration in order for Intrado to *receive* 911 traffic. Intrado currently has no CLEC certificate to permit it to originate traffic and it is not presently even pursuing one. Even Intrado acknowledges that interconnection with CBT for the purpose of receiving traffic is subject to § 251(c), not § 251(a).<sup>7</sup>

The Commission has confirmed that, when interconnecting under § 251(c)(2), the requesting carrier's point of interconnection must be on the *ILEC's* existing network and that an ILEC has no duty to build out facilities to reach another carrier's network. *Arbitration Award* at

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<sup>5</sup> Case No. 07-1216-TP-ARB.

<sup>6</sup> In its decisions on Issues 2, 3 and 4, the Commission also seemed to conclude that CBT would have to seek interconnection with Intrado when Intrado is the 911/E-911 provider to a PSAP, that CBT was responsible for getting its end users' 911 calls to the POI on Intrado's network, and that § 251(c) would not apply to that arrangement. While CBT has not sought rehearing of Issues 2, 3 and 4 because the Commission made the correct decision on the contract language that was actually in dispute between the parties, CBT does disagree with the Commission's conclusions regarding any duty of CBT to seek interconnection to Intrado.

<sup>7</sup> See Intrado's Application for Rehearing in the Embarq arbitration, Case No. 07-1216-TP-ARB.

9. However, in Issue 6, the Commission stated that Intrado's trunk port would be the location of the point of interconnection on Intrado's network. *Arbitration Award* at 22. But the only place Intrado could obtain interconnection under Section 251(c)(2), which is all it has requested, is at a point in CBT's existing network – which obviously does not include Intrado's selective router. The assumption that Cincinnati Bell would be required to request interconnection on Intrado's network under § 251(a) is erroneous and should be reversed for several reasons.

*First*, neither Intrado nor CBT identified interconnection under § 251(a) as an “open issue” for arbitration. Section 252(b), which governs requests for compulsory arbitration with ILECs, requires the Commission to “limit its consideration” to the open issues raised for arbitration by the parties themselves, and directs the Commission to “resolve each issue” only “as required to implement subsection (c).” 47 U.S.C. § 252(b)(4)(A) & (C). With respect to rates, § 252(c)(2) requires compliance with the pricing standards in § 252(d), which applies only to § 251(c)(2), not § 251(a). Thus, any discussion of pricing under § 251(a) is outside the scope of this case and the Commission's delegated authority under § 252(b)(4).

*Second*, CBT has not requested interconnection to Intrado at all, under § 251(a) or otherwise. Nor does § 251(a) impose any duty on CBT to seek interconnection to Intrado. A § 252(b) arbitration can be initiated *only* by a formal request by one of the parties to the negotiations. 47 U.S.C. § 252(b)(1). Intrado's Petition was filed pursuant to § 251(c) and does not seek arbitration of *any* issue arising under § 251(a). Neither does CBT.

*Third*, a request for interconnection under § 251(a) would not be subject to the compulsory arbitration provisions of § 252(b). The only provision that requires ILECs to negotiate interconnection agreements with competitors under § 252(a) is § 251(c)(1). And the only negotiation requirement imposed on ILECs under § 251(c)(1) is the duty to negotiate terms

and conditions for the duties imposed on ILECs under §§ 251(b) and (c). There is no mention of § 251(a). A state commission cannot compel arbitration of an interconnection agreement under § 251(a) of the Act. By definition, § 252(b) arbitrations can only involve a request for interconnection to an ILEC,<sup>8</sup> and the only “requirements of § 251” that specifically apply to ILECs are in §§ 251(b) and (c).

*Fourth*, using § 251(a) to force CBT to establish a POI on Intrado’s network would conflict with the 1996 Act. Sections 251(a), (b), and (c) of the Act impose an escalating series of requirements, with only § 251(b) and (c) specifically applying to ILECs and requiring ILECs to negotiate or arbitrate interconnection agreements. 47 U.S.C. § 251(c)(1). Section 251(c) and the FCC’s rules represent the extent to which Congress and the FCC have allowed competitors to compel access to an ILEC’s network. Ohio law specifically precludes the Commission from imposing any interconnection requirements that exceed or are inconsistent with or prohibited by federal law.<sup>9</sup> Therefore, Ohio law precludes the Commission from overriding the requirements of § 251(c). Under § 251(c), Congress and the FCC refused to require ILECs to build out to or establish POIs on their competitors’ networks. It would turn § 251 on its head to find that competitors have *greater* rights under § 251(a) than they do under § 251(c)(2).

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<sup>8</sup> 47 U.S.C. §§ 252(a)(1) and (b)(1) refer exclusively to requests made *to* an ILEC for interconnection *to* the ILEC’s network.

<sup>9</sup> Revised Code § 4905.041(A).

## **CONCLUSION**

Section 251(c) requires an ILEC to enter into an agreement with a new entrant to enable the competitor's customers to place calls to *and receive* calls from the ILEC's subscribers. By declining to require CBT to establish two POIs on Intrado's network, or to deliver its traffic to an Intrado selective router located outside CBT's service territory, the Commission appropriately followed § 251(c), which requires that the point of interconnection be on the ILEC's network. In ruling that it is not § 251(c) interconnection when Intrado is the 911/E911 service provider, the Commission has created an unreasonable distinction that has no legal basis. But, if the Commission believes that § 251(a) controls the terms of CBT's delivery of traffic to Intrado, then establishing a rate that CBT must pay for interconnection trunk ports on Intrado's selective router through arbitration is an error of law because § 252 arbitration does not apply to § 251(a) agreements. The Commission has no jurisdiction to arbitrate the terms of a § 251(a) agreement. The Commission should grant rehearing and reverse its decision on Issue 6 purporting to set rates for interconnection trunk ports pursuant to § 251(a) of the Act.

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**CERTIFICATE OF SERVICE**

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Summary: Application for Rehearing electronically filed by Mr. Douglas E. Hart on behalf of  
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