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 Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company	))))))	Case No. 08-537-TP-ARB

MEMORANDUM OF CINCINNATI BELL TELEPHONE COMPANY LLC IN OPPOSITION TO APPLICATION FOR REHEARING OF INTRADO COMMUNICATIONS INC.

In accordance with Rule 4901-1-35(B) of the Ohio Administrative Code, Cincinnati Bell Telephone Company LLC ("CBT") submits this Memorandum in Opposition to the Application for Rehearing filed by Intrado Communications Inc. ("Intrado") on November 7, 2008. The reasons for rehearing advocated by Intrado are without merit and should be denied.

Intrado contends that the Arbitration Award limits its ability to compete because it: (1) fails to find that interconnection between Intrado and CBT is subject to § 251(c) and (2) fails to adopt Intrado's proposed interconnection arrangements to ensure Intrado receives interconnection from CBT that is at least equal in quality to that which CBT provides to itself and other parties interconnecting to its own network. But Intrado fails to identify which, if any, of the six contested issues considered by the Commission in this arbitration it claims was decided incorrectly or what contract language it seeks in lieu of that ordered by the Commission. The Commission should deny the application for rehearing for failure to identify error in any specific term of the interconnection as ordered by the Commission. Intrado also requests the Commission to clarify that it is entitled to obtain unbundled network elements ("UNEs") to provide service to PSAP customers. The Commission should deny Intrado's requests and confirm the arbitration award, except as to Issue 6, which is the subject of CBT's separate application for rehearing.

I. THE COMMISSION'S TREATMENT OF § 251(C) HAD NO EFFECT ON THE OUTCOME OF ISSUES 1 THROUGH 5 AND, THUS, WAS HARMLESS ERROR.

Intrado contends that it is entitled to interconnection pursuant to § 251(c),[1] therefore, the Commission should have evaluated the terms of the interconnection agreement to ensure that Intrado would receive 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."[2] Intrado's argument fails because the Commission did apply § 251(c)(2)(C) and determined that CBT's proposal would provide Intrado with such interconnection.

Intrado complains that the Commission erred when it looked to its findings in the Embarq Arbitration Award[3] to determine that § 251(c) did not apply to Intrado's interconnection arrangements with CBT when Intrado was the designated 911/E911 service provider.[4] Even assuming that Intrado is entitled to interconnect pursuant to § 251(c), it has not demonstrated any prejudice resulting from the Commission's § 251(c) analysis. An arbitration award speaks through the contract terms that it orders the parties to follow.[5] Intrado has not shown that the Commission's analysis of §§ 251(a) and 251(c), about which it complains, lead to any improper terms in the interconnection agreement. In order to merit a rehearing, it is incumbent upon Intrado to demonstrate

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[1] 47 U.S.C. § 251(c).

[2] 47 U.S.C. § 251(c)(2)(C).

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

[4] *CBT Arbitration Award* at 8.

[5] Judicial review of an arbitration award is limited to "whether the agreement or statement [of generally available terms] meets the requirements of section 251 and this section [252]." 47 U.S.C. § 252(e)(6). If the resulting agreement satisfies §§ 251 and 252, there is no need to review the logic by which the Commission arrived at such language.

that some contract term the Commission ordered to be in the interconnection agreement would have been different had the Commission applied § 251(c) analysis instead of § 251(a).

While it claims that its § 251(c) rights were compromised, Intrado fails to acknowledge that it was allowed to arbitrate all of the contested issues in the interconnection agreement. But arbitration is not a right that is conferred by § 251(a) of the Act.[6] So, by definition, the Commission had to have acted pursuant to § 251(c) for this arbitration to have occurred.

Intrado claims in its rhetoric that, solely because the Commission applied § 251(a) instead of § 251(c), Intrado will face barriers that could make it impossible for it to compete. But it has failed to identify a single contract term ordered by the Commission that fits the bill or to demonstrate any competitive disadvantage as a result of the Arbitration Award. Intrado has been given all of the same rights it would have received had the Commission solely applied § 251(c), so it has not identified any issue on which rehearing should be granted with respect to § 251(c).

II. THE COMMISSION CORRECTLY FOUND THAT INTRADO'S INTERCONNECTION PROPOSALS WERE NOT SUPPORTED BY § 251(c)(2)(C)

Intrado complains that the Commission did not reach the issue of whether its proposed interconnection arrangements were supported by the "equal in quality" requirements of § 251(c)(2)(C) *in the Embarq Arbitration Award*. Perhaps that is something Intrado should contest in the *Embarq* arbitration case, but it is irrelevant in this case because the Commission *did* analyze Intrado's proposal here based on § 251(c)(2)(C).[7] Intrado absurdly suggests that the Commission's findings in this case should be reversed because they were inconsistent with the Embarq Arbitration

[6] Had the Commission truly followed § 251(a), it could not have arbitrated any issue that was not subject to § 251(b) or (c). This is the basis for CBT's independent application for rehearing with respect to Issue 6, wherein the Commission purported to impose terms for a § 251(a) agreement through compulsory arbitration.

[7] *CBT Arbitration Award* at 9.

Award.[8] But Intrado *wanted* its proposals judged under § 251(c)(2)(C) in both cases and that is what it got *in this case*. The fact that the Commission may not have followed the same analysis in the Embarq case is no reason to change the decision in this case. Intrado was not prejudiced by the application of § 251(a) *in this case* so it provides no basis for rehearing *in this case*.

As a backup argument, Intrado claims that the Commission's analysis under § 251(c)(2)(C) was incorrect. However, it fails to point out which issues or contract language it claims should be different. Based on Intrado's brief, CBT surmises that its complaint relates to Issues 2 and 3, which had to do with the number and location of the points of interconnection ("POI") and the trunking arrangements in split wire centers. But Intrado has failed to clearly point out what it wants the Commission to do on rehearing or exactly what contract language it wants changed.[9] This alone is sufficient grounds for denying rehearing.

Intrado claims the Commission erred in finding that its demand for dedicated trunking to geographically diverse points on Intrado's network was "superior" to the interconnection that CBT provides to itself and demands of other carriers.[10] Intrado has failed to demonstrate error and only rehashes the same distortions of the record that it has tried unsuccessfully all along. It claims that the interconnection it requested is the same interconnectivity CBT provides itself when it is functioning

[8] Intrado has sought rehearing of the Commission's failure to apply § 251(c)(2)(C) in the Embarq Arbitration. Application for Rehearing of Intrado Communications Inc. (filed October 24, 2008).
[9] Intrado certainly has not identified any claimed error in the resolution of Issues 1 (description of regulatory proceedings), 4 (transit traffic), 5 (NENA/NRIC standards) or 6 (port charges).
[10] Intrado ignores the Commission's conclusion that to force CBT to interconnect at multiple POIs, one of which would be out of territory, would be superior to what CBT provides itself. *CBT Arbitration Award* at 9. Intrado also ignores the substantial costs that would be required to implement its "line attribute routing" proposal and disavowed any responsibility for covering those costs (despite having agreed to pay them in Schedule 2.2, which makes Intrado responsible for the costs of special arrangements). If Intrado wants a more expensive form of interconnection, it is responsible for those additional costs. *First Report and Order*, 96-98, ¶¶ 199, 200, 209, 225, 552.

as the designated 911 /E911 provider. However, the evidence Intrado cites in support of this argument has nothing to do with the quality of the interconnection that CBT would give to Intrado. Intrado is complaining about CBT's internal network design, not the quality of the interconnection with Intrado. But nothing in the Act, the FCC's rules or this Commission's rules mandates how CBT must design its network for traffic *originating* from CBT's customers.

With respect to Issue 2, Intrado sought to force CBT to transport traffic originating on CBT's network to at least two points of interconnection *on Intrado's network*, one of which would admittedly have been outside of CBT's service territory. Intrado has yet to reconcile its argument that § 251(c) governs this arbitration with the mandate in § 251(c)(2)(B) that the point of interconnection must be on the ILEC's network.[11] No "equal in quality" requirement can trump the requirement that the POI must be on CBT's network. Intrado is free to establish as many POIs *on CBT's network* as it wishes—but CBT has the right under the law and § 3.2.2 of the interconnection agreement to use the same POI for the mutual exchange of traffic with Intrado. The Commission correctly determined that nothing in § 251 of the Act requires the requesting carrier to establish more than one point of interconnection or for CBT to establish a POI in Intrado's network.[12]

In Issue 3, Intrado claimed that, because CBT uses dedicated, diversely routed trunking between the end office switches and selective routers within its own network, CBT must also provide dedicated, diversely routed trunking *to Intrado's selective routers* if Intrado is designated as the 911 service provider by a PSAP. There is no basis for imposing such a requirement on any carrier for traffic originated on its network. Just as any originating carrier can choose whether to deliver traffic to interconnecting carriers directly from an end office switch or through a tandem switch, a carrier

[11] This is also mandated by the FCC's rules and this Commission's Rules. 47 C.F.R. § 51.305; Ohio Admin. Code § 4901:1-7-06(A)(5).
[12] Arbitration Award, p. 9.

originating 911 traffic should be allowed to deliver it through a selective router that is the equivalent of a tandem switch. CBT knows of no situation where an ILEC has ever been required to route its originating traffic over direct end office trunks (as opposed to through a tandem switch) to an interconnecting carrier. Intrado offers no reason why CBT should be required to route its originating 911 traffic in that fashion.

The terms ordered by the Commission do provide Intrado with interconnectivity "that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."[13] The interconnection CBT provides when it sends 911 calls to PSAPs served by it or by other telephone networks is no different from what it has offered to Intrado if Intrado becomes the 911/E911 service provider to a PSAP. All of CBT's internal 911 traffic goes through a selective router before being delivered to the PSAP. There are no direct trunks between any CBT end office and a PSAP. CBT also interconnects with adjacent LECs using connections between their respective selective routers, *not* through direct end office trunking from a CBT end office.[14] If and when Intrado becomes the designated 911 provider for a PSAP currently served by CBT, CBT would redirect the trunks that serve that PSAP to Intrado's POI.[15] Thus, Intrado will receive exactly the same interconnection as CBT provides to itself and others. But Intrado insists on something different—line attribute routing— that no one else has; and, Intrado refuses to pay for its special request.

Intrado also continues to claim (falsely) that CBT imposes a requirement on competitors to use dedicated trunking with diverse routing to deliver their end users' 911 calls destined for CBT's PSAP customers to CBT's selective router. Nothing in § 3.8.2 of the interconnection agreement

[13] 47 U.S.C. § 251(c)(2)(C).
[14] CBT Hearing Exhibit No. 9, Pre-Filed Testimony of Robert P. Fite ("Fite") at 4.
[15] Fite, pp. 7-8.

requires any CLEC to have dedicated trunks from the CLEC's switch to CBT's selective router. Section 3.8.2(a) addresses the situation where the CLEC would be using *CBT unbundled switching* to serve end user customers (something that is no longer available under the new FCC unbundling rules[16]). CBT agreed to provide the trunking between that end office and CBT's selective router, if requested, at rates stated in the agreement. Nothing says that a CLEC had to use CBT's trunking at all. And nothing restricts a CLEC from consolidating 911 traffic from multiple switches (whether CLEC or CBT switches) before routing it to CBT's selective router. Nor does § 3.8.2(b) have the meaning ascribed to it by Intrado. It merely states the obvious—if the CLEC wants to use 911 service provided by CBT, the CLEC has to get its 911 traffic from its switches to CBT's selective router. Nothing says that each CLEC switch has to have a direct trunk. And, nothing requires CLECs to use diverse routing – all it says is that, *if* the CLEC wants diverse routing, CBT would agree to provide it. It is *available*, but not *mandatory*. Intrado has been misconstruing these provisions throughout this case— they provide no precedent for how CBT would have to deliver 911 traffic to Intrado.

Intrado has not demonstrated that the interconnection arrangements CBT provides to itself and to other competitors when CBT is the designated 911/E911 service provider are not equal to those that would be applicable if Intrado is the designated 911/E911 service provider. Accordingly, the Commission's findings should be sustained and the request for rehearing denied.

[16] Order on Remand, *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 F.C.C.Rcd. 2533 (2005).

III. THERE IS NO NEED FOR THE COMMISSION TO CLARIFY WHETHER INTRADO IS ENTITLED TO UNBUNDLED NETWORK ELEMENTS

Intrado complains that the Arbitration Award "appears" to indicate that Intrado is only entitled to UNEs when it seeks to expand its certification status to offer dialtone services to end user customers other than PSAPs.[17] Intrado requests that the Commission clarify that it is entitled to obtain UNEs from CBT under its current certification status. Nowhere in the Arbitration Award did the Commission address or even implicate Intrado's right to access UNEs, as that was never an issue in this arbitration. There is no reason for such a clarification, as Intrado's rights with respect to UNEs are described in Article 9 of the interconnection agreement. No arbitration issues had any bearing on UNEs, there was no disputed contract language in Article 9, and the Commission did not order any changes to such language. Therefore, there is nothing for the Commission to "clarify."

IV. CONCLUSION

For the foregoing reasons, the Commission should deny Intrado's application for rehearing, and affirm the Arbitration Award, except with respect to Issue 6, which is the subject of CBT's independent application for rehearing.

Respectfully submitted,

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[17] *CBT Arbitration Award* at 22.

CERTIFICATE OF SERVICE

I certify that on this 17th day of November 2008, I electronically served the foregoing Memorandum of Cincinnati Bell Telephone Company LLC in Opposition to Application for Rehearing of Intrado Communications Inc. on the following:

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Summary: Memorandum in Opposition to Application for Rehearing of Intrado Communications, Inc. electronically filed by Mr. Douglas E. Hart on behalf of CINCINNATI BELL TELEPHONE COMPANY