

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA OF INTRADO COMMUNICATIONS INC.
TO CINCINNATI BELL TELEPHONE COMPANY APPLICATION FOR REHEARING**

Pursuant to §§ 4903.10 of the Revised Code and Rule 4901-1-35 of the Ohio Administrative Code, Intrado Communications Inc. (“Intrado Comm”), by its attorneys, hereby submits this memorandum in support of its opposition to the Application for Rehearing filed by Cincinnati Bell Telephone Company (“CBT”) of the October 8, 2008 *CBT Arbitration Award* issued by the Public Utilities Commission of Ohio (“Commission”) in the above-referenced matter. Intrado Comm agrees with many of the points raised by CBT and Intrado Comm itself has sought rehearing on some of these very issues.¹ CBT’s Application, however, contains several factual and legal inaccuracies, and all of CBT’s rehearing requests should not be granted on the basis of these inaccuracies.

¹ Case 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Intrado Communications Inc. Application for Rehearing (filed Nov. 7, 2008); *see also* Case 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*, Intrado Communications Inc. Application for Rehearing (filed Oct. 24, 2008).

I. SECTION 251(c) GOVERNS INTRADO COMM'S INTERCONNECTION ARRANGEMENTS WITH CBT

Intrado Comm agrees with CBT that Section 251(c) of the Communications Act of 1934, as amended (“Act”), governs the interconnection arrangements between the Parties.² As CBT acknowledges and as Intrado Comm has argued in this proceeding and others,³ Section 251(c) of the Act is applicable whenever a competitor like Intrado Comm seeks to interconnect with an incumbent local exchange carrier (“ILEC”) like CBT. The Act and the rulings of the Federal Communications Commission (“FCC”) are clear that all ILEC-competitor interconnection is governed by Section 251(c), not Section 251(a).⁴ ILECs are required by Section 251(c)(2) to allow competitors to interconnect while interconnection arrangements between “non-incumbent carriers” are governed by Section 251(a).⁵ Thus, the interconnection obligations of ILECs when dealing with other ILECs are governed by Section 251(a) as are interconnection arrangements between two competitors.⁶ ILEC-to-competitor relationships, by contrast, are always governed by Section 251(c).⁷

² CBT at 3.

³ CBT at 3; *see also* Case 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*, Intrado Communications Inc. Application for Rehearing (filed Oct. 24, 2008); Case 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Intrado Communications Inc. Application for Rehearing (filed Nov. 7, 2008).

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶¶ 997 (1996) (“*Local Competition Order*”) (intervening history omitted), *aff’d by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

⁵ *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, et al.*, 17 FCC Rcd 27039, n.200 (2002) (“*Virginia Arbitration Order*”).

⁶ *Local Competition Order* ¶ 220.

⁷ *Local Competition Order* ¶ 997.

Contrary to the Commission’s findings in the *CBT Arbitration Award*, there was no dispute between the Parties about whether their interconnection arrangements should be governed by Section 251(c).⁸ Indeed, CBT is correct that neither Intrado Comm nor CBT identified Intrado Comm’s entitlement to Section 251(c) interconnection as an open issue between the Parties.⁹ The Commission reached its conclusion that Section 251(c) did not apply to Intrado Comm’s interconnection arrangements with CBT only when Intrado Comm was the designated 911/E911 service provider based solely on its previous findings in the *Embarq Arbitration Award*.¹⁰

As the Commission previously found, “oversight and resolution of disputes raised in this proceeding are of significant public interest due to the fact that the identified issues directly impact the provisioning of uninterrupted emergency 9-1-1 service.”¹¹ For similar reasons, arbitrators and state commissions in previous arbitration proceedings between AT&T and Intrado Comm predecessors determined that “there are clear public policy implications to the accurate and timely delivery of 9-1-1 calls, which policies underscore [the Texas] Commission’s exercise of jurisdiction.”¹² Likewise, the Illinois Commerce Commission determined that the public interest requires competitive 911/E911 service providers like Intrado Comm to be subject to common carrier regulation because “of the utmost importance that the continuance and quality of

⁸ *CBT Arbitration Award* at 8-9.

⁹ CBT at 5.

¹⁰ *CBT Arbitration Award* at 8.

¹¹ 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 at 15 (Sept. 24, 2008) (“*Embarq Arbitration Award*”).

¹² Texas Docket No. 23378, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement with SBC Communications*, Order No. 8 Denying Motion to Dismiss at 12 (Jan. 4, 2002) (“*Texas SCC Order*”).

a 9-1-1 call be preserved and enhanced.”¹³ As “a matter of public safety,” competitive 911/E911 services should be regulated because the “public interest is protected when [Intrado Comm’s] services are regulated.”¹⁴ The same reasoning holds true here.¹⁵

There is no doubt that the Commission has a critical role in the oversight of the rollout of 911 services. As the FCC has found, Sections 251(e) and 706 of the Act give the FCC, as well as state commissions, authority to oversee the deployment of 911 services.¹⁶ The FCC found that the “uniform availability of E911 services may spur consumer demand” for broadband services, which accomplishes the goals of the Act.¹⁷ 911/E911 services play a “critical role” in achieving the Act’s goal of promoting safety of life and property because ““improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce.””¹⁸ The Commission’s finding that Intrado Comm is entitled to have CBT deliver traffic to Intrado Comm’s network when Intrado Comm is the designated 911/E911 service provider is therefore consistent with these principles.

Further, CBT is correct that the application of Section 251(c) to the Parties’ interconnection relationship does not change based on the Commission’s erroneous view that CBT was the requesting party.¹⁹ Section 251(c) applies to interconnection between a competitor and an ILEC regardless of who is providing service to whom or on whose network the

¹³ ICC Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (I.C.C. Mar. 21, 2001) (“*Illinois SCC Order*”).

¹⁴ *Illinois SCC Order* at 8.

¹⁵ 47 U.S.C. § 253(b).

¹⁶ *911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶¶ 31, 33 (2005) (“*VoIP E911 Order*”).

¹⁷ *VoIP E911 Order* ¶ 31.

¹⁸ *VoIP E911 Order* ¶ 32 (citing 47 U.S.C. § 615(a)(3)).

¹⁹ CBT at 5.

connection is to take place. Once interconnection is requested by a competitor, the ILEC is obligated to negotiate an agreement for the mutual exchange of traffic; 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.²⁰ Section 251(c), not 251(a) is the appropriate framework for the Parties' interconnection relationship. As discussed above, however, the Commission can determine certain arrangements are in the public interest pursuant to its "broad regulatory authority"²¹ under Sections 253(b) and 706 of the Act.

II. INTRADO COMM HAS NOT AGREED TO INTERCONNECT ON CBT'S NETWORK WHEN INTRADO COMM IS THE 911/E911 SERVICE PROVIDER

While Intrado Comm agrees with many of CBT's arguments, Intrado Comm strongly disagrees with Intrado Comm's assertion that the Parties have agreed to interconnect on CBT's network when Intrado Comm is the 911/E911 service provider.²² The issue of whether CBT was required to interconnect on Intrado Comm's network was an issue designated for arbitration between the Parties.²³ As the record reflects, CBT argued it was not required to interconnect on Intrado Comm's network, especially if Intrado Comm's network was outside of CBT's serving territory.²⁴ There is no support for CBT's claim now that Intrado Comm has agreed to interconnect on its network for the Parties' exchange of 911 traffic when Intrado Comm is the 911/E911 service provider.

²⁰ *CBT Arbitration Award* at 8-9.

²¹ *Cheyenne River Sioux Tribe Telephone Authority and US WEST Communications, Inc.; Joint Petition for Expedited Ruling Preempting South Dakota Law*, 17 FCC Rcd 16916, ¶ 29 (2002).

²² CBT at 3.

²³ *CBT Arbitration Award* at 8 ("As presented in the record in this proceeding, there are two severable issues to be addressed: how many points of interconnection are required and where any point or points of interconnection will be located.").

²⁴ *CBT Arbitration Award* at 8 (citing CBT arguments).

CBT's reliance on Section 3.3.2 of the interconnection agreement in support of its arguments is misplaced.²⁵ Section 3.3.2 of the interconnection agreement merely states that CBT may use the same point of interconnection ("POI") that Intrado Comm establishes on CBT's network to send traffic to Intrado Comm's network.²⁶ This section of the agreement was intended to apply to interconnection generally. There is, however, an entirely separate part of the interconnection agreement addressing how the Parties will interconnect and exchange traffic with each other when Intrado Comm is the designated 911/E911 service provider.²⁷ Specifically, in Section 3.8.7, CBT has agreed to transport its end users' 911 calls to the mutually agreed POI on Intrado Comm's network that will be used "exclusively" for termination of 911/E911 service traffic.²⁸ CBT's obligation to interconnect on Intrado Comm's network when Intrado Comm is the designated 911/E911 service provider was upheld by the Commission in the *CBT Arbitration Award* with the limitation that CBT was not required to transport traffic outside of its serving territory (*i.e.*, the LATA).²⁹ CBT has presented no reason to modify the Commission's previous finding that it is required to deliver its end users 911/E911 traffic to Intrado Comm's network when Intrado Comm is the designated 911/E911 service provider.

²⁵ CBT at 3.

²⁶ Case 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Interconnection Agreement at § 3.3.2 (filed Nov. 7, 2008) ("Intrado Comm-CBT Interconnection Agreement").

²⁷ See, *e.g.*, *Hedrick v. Spitzer Motor City, Inc.*, 2007 Ohio App. LEXIS 5971, *P16 (Dec. 20, 2007) ("It is well established that where a general provision in a contract conflicts with a specific provision, the specific provision controls.").

²⁸ Intrado Comm-CBT Interconnection Agreement § 3.8.7.1.

²⁹ *CBT Arbitration Award* at 8, 15.

III. THE COMMISSION HAS THE AUTHORITY TO ARBITRATE AND ENFORCE ALL SECTION 251 AGREEMENTS

While Intrado Comm agrees that all ILEC-competitor arrangements are governed by Section 251(c), Intrado Comm's disagrees with CBT that a state commission cannot use its Section 252 arbitration and enforcement authority over Section 251(a) agreements.³⁰ All carriers are required to comply with Section 251(a), and Section 251(b) establishes the minimum requirements that any carrier must provide to another. Section 251(a) governs the physical interconnection of two carriers' networks, while terms and conditions addressing the transport and termination of traffic between their networks are governed by Section 251(b)(5).³¹ The FCC has confirmed that carriers are entitled to interconnection under Sections 251(a) and 251(b),³² and that "the exchange of traffic under section 251(b)(5) is governed by interconnection agreements."³³ Further, the FCC has determined that any "agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation" must be subject to the filing and approval requirements of Section 252.³⁴ These obligations originate from both Sections 251(b) and 251(c).

Thus, while Intrado Comm is entitled to interconnection under 251(c), arbitration is permitted for agreements pursuant to Section 251(a) and for provisions outside of 251(b) and

³⁰ CBT at 5-6.

³¹ *Local Competition Order* ¶ 176; *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 684 (8th Cir. 2008) (citing *AT&T Corp. v. FCC*, 317 F.3d 227, 234-35 (D.C. Cir. 2003) and *Competitive Telecomms Assn'n v. FCC*, 117 F.3d 1068, 1072 (8th Cir. 1997)).

³² *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd 3513 (2007).

³³ *Developing a Unified Inter-carrier Compensation Regime*, 20 FCC Rcd 4685, ¶ 116 (2005).

³⁴ *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd 19337, ¶ 8 (2002) (emphasis in original) ("*Qwest Order*").

251(c) in certain circumstances. For example, consistent with the Commission’s findings in the *Embarq Arbitration Award*,³⁵ other state commissions have determined that the 252 arbitration process applies to all Section 251 agreements with ILECs.³⁶ Section 252(a) of the Act permits any party to a negotiation under Section 252 to petition a state commission for arbitration.³⁷ Section 252(a)(1) also addresses voluntary negotiations, and permits parties to enter into an interconnection agreement without regard to Sections 251(b) or 251(c).³⁸ Arrangements that may not fall squarely within Section 251 do not preclude those provisions from being included in a Section 251(c) interconnection agreement or from being subject to arbitration under 252.³⁹

³⁵ *Embarq Arbitration Award* at 14-15.

³⁶ *See, e.g.*, Cause No. 43052-INT-01, *Sprint Communications Company L.P.’s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc.*, Opinion (I.U.R.C. Sept. 6, 2006) (agreeing that Section 251(a) issues may be included in a Section 252 arbitration proceeding); Case No. PU-2065-02-465, *Level 3 Communications LLC Interconnection Arbitration Application*, Order (N.D. P.U.C May 30, 2003) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); Docket No. UT-023043, *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Seventh Supplemental Order: Affirming Arbitrator’s Report and Decision (Wash. U.T.C. Feb 28, 2003) (“[T]he mechanisms for negotiation, mediation, and arbitration provided by Section 252 apply to requests to negotiate made under Section 251(a).”).

³⁷ 47 U.S.C. § 252(a).

³⁸ 47 U.S.C. § 252(a)(1).

³⁹ *Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003).

CONCLUSION

For the foregoing reasons, the Commission should deny CBT's Application for Rehearing to the extent requested herein.

Respectfully submitted,

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Dated: November 17, 2008

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CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 17th day of November 2008, the foregoing Memorandum Contra of Intrado Communications Inc. was served on the following via electronic mail.



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Case No(s). 08-0537-TP-ARB

Summary: Response Response to CBT Application for Rehearing electronically filed by Angela F Collins on behalf of Intrado Communications Inc.