# Sixth Circuit Rules That States May Fashion ILEC Interconnection Obligations under Section 251(a)

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In an interconnection decision that may have implications beyond its facts, a federal appellate court ruled that State public utility commissions ("State Commissions") may rely on Section 251(a) in resolving interconnection disputes involving incumbent local exchange carriers ("ILECs"). On March 28, 2013, the U.S. Court of Appeals for the Sixth Circuit ruled that ILECS have interconnection obligations under Section 251(a) of the Communications Act of 1934, as amended (the "Act"), which State Commissions can enforce in Section 252 interconnection arbitrations. Affirming a judgment of the U.S. District Court for the Southern District of Ohio and an arbitration decision of the Public Utilities Commission of Ohio ("PUCO"), the Court found that an ILEC's interconnection obligations are not limited by those expressly set forth in Section 251(c), as AT&T had argued. Rather, the Court held that a State Commission can impose obligations on an ILEC under Section 251(a), including an obligation to establish a point of interconnection ("POI") on the network of a requesting interconnecting competitive local exchange carrier ("CLEC"). Significantly, this is the first decision of which we are aware by a federal appellate court expressly finding that a State Commission can impose obligations on an ILEC under Section 251(a) that differ from the ILEC-specific obligations of Section 251(c)(2).

The case arose out of a request by Intrado Communications, Inc. ("Intrado") for interconnection with AT&T in order to provide competitive emergency communications services to Public Safety Answering Points ("PSAPs"), specifically services allowing the PSAPs to receive 911 emergency telephone calls. When the two carriers failed to reach a negotiated agreement on all points, Intrado sought arbitration before PUCO. One of the issues Intrado raised in its Petition was on whose network POIs should be established in geographic areas where Intrado was the designated 911 service provider. PUCO held that, when AT&T brought end user 911 calls to Intrado for completion to a PSAP served by Intrado, AT&T must establish a POI on Intrado's network. Ultimately, PUCO based its decision on Section 251(a), not on Section 251(c), which Intrado had referenced in its Petition.

AT&T argued that only Section 251(c)(2) articulates the interconnection obligations that apply to an ILEC and that, as a result, the only POI that can be ordered in an arbitration involving an ILEC and a CLEC is *on the ILEC's network*. Specifically, AT&T pointed to Section 251(c)(2)(B), which obligates an ILEC to provide, upon request, "interconnection with the [incumbent] local exchange carrier's network . . . at any technically feasible point *within the carrier's network*" (emphasis added). In other words, AT&T argued that any Section 251(a) obligations it might have could not extend beyond the more specific ILEC obligations contained in Section 251(c)(2).

The Court plainly disagreed with AT&T that the POI must be located on AT&T's network for two principal reasons. One, it concurred with the FCC's straightforward statement in its 1996 decision implementing the local competition provisions of the Telecommunications Act of 1996 that Section 251(a) "applies to all telecommunications carriers." Two, observing that a State Commission can require one CLEC to establish a POI located on another interconnecting CLEC's network, the Court reasoned that "it makes little sense to read the Act in a way that imposes fewer obligations on the incumbent carriers than on less-established non-dominant carriers." The Court found that "there is no limiting language in the statute" requiring CLECs to always establish interconnection on the incumbent carrier's network. In so doing, the Court recognized the ability of State Commissions to fashion particular interconnection terms and conditions under Section 251(a) in the absence of a prohibition against doing so when faced with making an arbitration determination.

The Court's decision also speaks to the authority a State Commission has to resolve issues in a Section 252 arbitration when the petition is silent as to the statutory section on which the State Commission bases its decision. In brief, the Court ruled that in order for an issue to be considered by a State Commission in a Section 252 arbitration, the statutory section under which it is decided need not be the one under which the issue is decided by the State Commission provided that the parties understood and contested what was at stake substantively, as it found Intrado and AT&T did here.

This decision represents a setback for ILECs that have sought to limit their interconnection obligations to those explicitly set forth in Section 251(c) or to use Section 251(b)(4)(A) as a sword to preclude State Commissions from considering alternate legal or regulatory bases for action in arbitration proceedings that were not expressly raised in a petition or a response. It will be of interest to observe whether AT&T seeks further review of this matter, having now lost at the PUCO, the federal District Court, and before the U.S. Court of Appeals.

At the same time, it bears monitoring whether CLECs will be able to make offensive use of this decision. Notably, the Court did *not* cite as a limitation of its decision the nature of the competitive services that Intrado sought to provide, *i.e.*, emergency communications. As such, the decision could be of relevance in a wide variety of interconnections scenarios.