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August 13, 2009 – **VIA ELECTRONIC MAIL**

Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 080134-TP
Petition by Intrado Communications, Inc. for arbitration to establish an
interconnection agreement with Verizon Florida LLC, pursuant to Section 252(b)
of the Communications Act of 1934, as amended, and Section 364.162, F.S.

Dear Ms. Cole:

Enclosed for filing in the above matter is Verizon Florida LLC’s Motion to Add Issues
and Establish a New Hearing Date. Service has been made as indicated on the
Certificate of Service. If there are any questions regarding this filing, please contact me
at (678) 259-1449.

Sincerely,

s/ Dulaney L. O’Roark III

Dulaney L. O’Roark III

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Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Intrado Communications Inc.)
for arbitration to establish an interconnection)
agreement with Verizon Florida LLC, pursuant)
to Section 252(b) of the Communications Act)
of 1934, as amended, and Section 364.12,)
F.S.)
_____)

Docket No. 080134-TP
Filed: August 13, 2009

**VERIZON FLORIDA LLC'S MOTION TO ADD
ISSUES AND ESTABLISH A NEW HEARING DATE**

Verizon Florida LLC ("Verizon") asks the Commission to add two main issues to its tentative list of issues to be considered and resolved in this arbitration proceeding and to establish a new hearing date to allow a meaningful opportunity for Verizon and Commission Staff to conduct discovery based on allegations contained in Intrado's rebuttal testimony.¹ In support of this request, Verizon states as follows:

The Commission's Order Establishing Procedure includes a tentative list of issues and states that "[t]he scope of this proceeding will be based upon these issues *as well as other issues raised by the parties up to and during the Prehearing Conference, unless modified by the Commission.*"² The Prehearing Conference in this matter is scheduled for August 20, 2009.³

Intrado Communications Inc. ("Intrado") requested interconnection with Verizon under section 251(c) of the Communications Act of 1934, as amended ("the Act"), solely for services it plans to provide Public Safety Answering Points ("PSAPs") and

¹ As required by Rule 28-106.204(3), Florida Administrative Code (F.A.C.), prior to filing this motion Verizon informed Intrado's counsel of the new issues it would be seeking to add for consideration and resolution and the delay in the hearing date it would be proposing in this proceeding. Intrado's counsel advised Verizon that Intrado "will vigorously oppose Verizon's Motion."

² Order No. PSC-08-0745-PCO-TP issued November 12, 2008 ("Order Establishing Procedure") at 2 (emphasis added), modified by Order No. PSC-09-0189-PCO-TP issued Mar. 27, 2009 ("Order Modifying Procedure").

³ Order Modifying Procedure at 1.

governmental agencies responsible for receiving 911/E911 calls. Intrado did not seek interconnection for any other purpose either in negotiations or in its petition for arbitration (“Petition”). The services for which Intrado sought interconnection with Verizon are the exact same services for which Intrado sought to interconnect with AT&T and Embarq. In discovery that Verizon served on Intrado April 8, 2009, Verizon asked Intrado:

Are the services Intrado plans to provide in Verizon’s service territory the same as the services Intrado plans to provide in AT&T’s and Embarq’s service territories in Florida? If your answer is anything other than an unconditional yes, please list and fully describe the additional or different services Intrado will provide in Verizon’s territory as compared to the services Intrado will provide in AT&T’s and Embarq’s service territories in Florida.

Intrado’s one word response to this interrogatory was an unconditional “yes.”⁴ Indeed, the answer could not be anything other than yes, because Intrado’s Price List for its 911 services applies statewide, as Intrado also admitted in discovery.⁵ Intrado’s response to this interrogatory was based on its Florida Price List No. 1 with an issue date of July 8, 2008 and an effective date of July 9, 2008.⁶ Intrado never supplemented or amended its response despite the instruction to do so.⁷

⁴ Intrado Communications Inc.’s Notice of Service of Objections and Responses to Verizon Florida LLC’s First Set of Interrogatories, response to Request No. 4, April 27, 2009.

⁵ Id., Intrado response to Request No. 2.

⁶ Id. While Intrado’s response indicates the Price List “as may be amended” will govern the services it intends to provide on a statewide basis, the Price List effective at the time it filed its response did not include Intrado’s Enterprise 911 Service or the call origination capability that Intrado now claims are services for which it seeks interconnection. See Intrado Panel Rebuttal Testimony of Thomas Hicks and Eric Sorensen, filed Aug. 5, 2009 at 3-5.

⁷ See Verizon Florida LLC’s First Set of Interrogatories to Intrado, Definitions and Instructions (“each interrogatory shall be construed to include any supplemental information, knowledge, or data responsive to these interrogatories that you discover after responding to these interrogatories but before hearing if the answer was incomplete at the time it was made.”)

Since the Commission already ruled that Intrado is not entitled to arbitration of an interconnection agreement with AT&T and Embarq for its 911 services,⁸ and because Intrado admitted that it intends to provide exactly the same 911 services in Verizon's territory as it will in AT&T's and Embarq's territories, Verizon intended to file a Motion for Final Summary Order requesting the Commission to apply the law the same way in this case as it did in Intrado's arbitrations with Embarq and AT&T, and find, once again, that Intrado is not entitled to arbitration of an interconnection agreement for the 911 services it seeks to provide in Florida.

Intrado's rebuttal testimony attempts to substantially change Intrado's actual request for interconnection which was based on the services Intrado intended to provide at the time it filed its Petition. Intrado's rebuttal testimony also seeks to create a factual dispute about the services Intrado intends to provide in Florida in order to thwart Verizon's publicly stated intention to seek a final summary order dismissing Intrado's Petition.⁹ Intrado's rebuttal testimony contradicts the discovery responses described above by claiming that the service for which it sought interconnection allows Intrado's customers to originate calls through Intrado's Enterprise 911 service offering, which was added to Intrado's price list effective June 9, 2009, two weeks prior to the date parties

⁸ *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. ("AT&T/Intrado Arbitration")*, Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) ("*AT&T/Intrado Order*") and Final Order Denying Motion for Reconsideration (March 16, 2009) ("*AT&T/Intrado Recon. Order*"); *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. ("Embarq/Intrado Arbitration")*, Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) ("*Embarq/Intrado Order*") and Final Order Denying Motion for Reconsideration (March 16, 2009) ("*Embarq/Intrado Recon. Order*").

⁹ Verizon Direct Testimony at 11; Verizon Rebuttal Testimony at 11.

filed direct testimony,¹⁰ and through a capability it claims customers may activate upon request. Intrado's rebuttal testimony is a reversal of its responses to Verizon's First Set of Interrogatories and is nothing more than an after-the-fact attempt to change its request for interconnection based on services it purports to provide to customers (i.e. enterprise business customers), which are different than those customers Intrado stated it would be serving in its Petition and price list before its price list was revised June 9, 2009.

Because Intrado injected new and contradictory allegations about the services it intends to provide in a belated attempt to argue that the Commission has the jurisdiction to consider its request for interconnection under 251(c) of the Act, good cause exists to add the following issues for consideration and resolution in this proceeding:

Issue 1(a) What service(s) does Intrado currently provide or intend to provide in Florida? (b) Of the services identified in (a), for which, if any, is Verizon required to offer interconnection under Section 251(c) of the Communications Act of 1934, as amended?

Issue 2 If Enterprise 911 Service is a telephone exchange service, does Intrado have to file a new request for arbitration?

Issues 1(a) and 1(b) are appropriate because they are the same issues about Intrado's proposed 911 services that were raised in the AT&T and Embarq proceedings. The Commission answered questions 1(a) and 1(b) in the AT&T and Embarq arbitrations by finding that Intrado's proposed 911 services are not "telephone exchange service" as defined by the Act, and that Intrado is therefore not entitled to interconnection under section 251(c) of the Act.¹¹ Issue 2 is appropriate in the event that the Commission determines that Intrado's newly announced Enterprise 911 service

¹⁰ Intrado Panel Rebuttal Testimony of Thomas Hicks and Eric Sorensen, filed Aug. 5, 2009 at 3-5.

¹¹ See note 5, *supra*.

is a “telephone exchange service” under the Act (which it should not). Since Intrado’s Enterprise 911 service was not a service for which Intrado sought interconnection with Verizon, and which did not exist in Florida before June 9, 2009, good cause exists to raise the issue of whether Intrado must submit a new request for interconnection to Verizon and a new petition for arbitration should the parties be unable to reach agreement regarding terms and conditions for this service.

The Commission’s Order Modifying Procedure established a hearing date of September 16, 2009. Verizon submits that good cause exists to establish a new hearing date to allow for a meaningful opportunity for Verizon and Commission Staff to conduct discovery based on Intrado’s rebuttal testimony allegations regarding the services it intends to provide.¹² Verizon proposes that the hearing date be delayed by two months to allow adequate time for discovery. A specific date can be set at the Prehearing Conference on August 20, 2009.

For all of the forgoing reasons, Verizon submits that good cause exists to add issues 1(a), 1(b) and 2 listed above to the list of issues to be considered and resolved in this arbitration.

¹² The presiding officer may grant a continuance of a hearing for good cause shown. Rule 28-106.210, F.A.C. Delaying the hearing for approximately two months should allow adequate time for meaningful discovery of allegations in Intrado’s rebuttal, will aid administrative efficiency, assist in developing an adequate record for this case or a Motion for Summary Final Order, and not prejudice any party. As Staff’s recommendation to deny Verizon’s initial Motion for Summary Final Order noted that “[t]he Commission needs to gather additional information through the discovery process to determine if there are genuine issues of material fact.” Staff Memo, April 23, 2009 at 5-6. Accordingly, good cause exists to grant a continuance of the hearing date.

Respectfully submitted on August 13, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on August 13, 2009 to:

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