

Ruth Nettles

From: Ann Bassett [abassett@lawfla.com]
Sent: Friday, February 29, 2008 4:02 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 080089-TP
Attachments: 2008-02-29, 080089, Intrado's Response to AT&T Florida's Petition for Leave to Intervene.pdf

The person responsible for this electronic filing is:

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The Docket No. is 080089-TP - Petition of Intrado Communications Inc. for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Services.

This is being filed on behalf of Intrado Communications Inc.

Total Number of Pages is 5

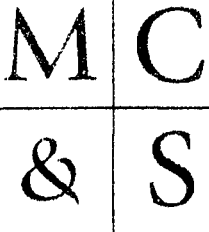
Intrado Communications Inc.'s Response to AT&T Florida's Petition for Leave to Intervene.

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February 29, 2008

BY ELECTRONIC FILING

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 080089-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Intrado Communications Inc. is an electronic version of Intrado Communications Inc.'s Response to AT&T Florida's Petition for Leave to Intervene in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,


Floyd R. Self

FRS/amb
Enclosure
cc: Rebecca Ballesteros, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Intrado Communications, Inc.)
for Declaratory Statement Regarding Local Exchange)
Telecommunications Network Emergency 911 Service)

Docket No. 080089-TP
Filed: February 29, 2008

RESPONSE TO AT&T FLORIDA'S PETITION FOR LEAVE TO INTERVENE

Intrado Communications, Inc. ("Intrado"), pursuant to Rule 28-106.205, Florida Administrative Code, hereby files this response to AT&T Florida's ("AT&T") Petition For Leave To Intervene and states:

1. Section 120.565, Florida Statutes, provides that "[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." This case involves the specific question of whether Intrado, as a competitive local exchange carrier ("CLEC"), or its customers are required by statute, rule, or order of the Commission to pay ILEC tariff charges for local exchange telecommunications 911 services. For the reasons set forth in the Petition, Intrado has legitimate questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority, and determined a need for a declaratory statement to resolve questions or doubts as to how the statutes, rules, orders, and tariffs discussed therein may apply to Intrado's particular circumstances.

2. The fact that the requested declaratory statement may also affect the rights of others is no bar to Intrado's right to request and receive a declaratory statement. *Department of Business and Professional Regulation, Division of Pari-Mutual Wagering v. Investment Corp. Of Palm Beach*, 747 So.2d 374 (Fla. 1999); *1000 Friends of Florida, Inc. v. Department of Community Affairs*, 760 So.2d 154 (Fla. 1st DCA 2000). Without conceding whether AT&T has fulfilled the procedural pleading requirements and demonstrated the substantive law basis for

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being granted intervention in this matter, Intrado notes that it is the Commission's responsibility to determine whether intervention by AT&T would be appropriate in helping to resolve whether Intrado or Intrado's customer has any obligation to pay any new charges to its former ILEC service provider.

3. AT&T appears to object to the fact that Intrado did not serve the Petition for Declaratory Statement on AT&T. There is no such obligation. Rule 28-105.002, Florida Administrative Code provides that the Petition for Declaratory Statement is to be filed with the clerk of the agency, in this case the Public Service Commission. That was done in full compliance with the rule. Upon the filing of a Petition for Declaratory Statement, Section 120.565(3), Florida Statutes, and Rule 28-105.0024, Florida Administrative Code, require the agency to file a notice in the Florida Administrative Weekly. Thus, it was not the responsibility of Intrado to "serve" AT&T with its Petition.

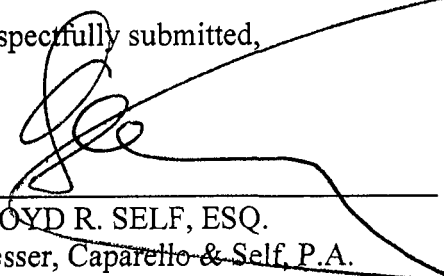
4. AT&T next asserts that the Commission grant it an extension of time "to file an appropriate responsive pleading (i.e. Motion to Dismiss and/or Answer and Affirmative Defenses)." Rule 28-105.0027, Florida Administrative Code does not authorize the filing of any "responsive pleading." Rather, the Rule only allows a person that can demonstrate that its substantial interests will be affected by the proceeding to file a petition to intervene in a form that meets the requirements of subsection 28-106.201(2). F.A.C. The intervention rules do not authorize the filing of either a motion to dismiss, an answer, or affirmative defenses.

5. Section 120.565, Florida Statutes, provides that a declaratory statement is to be an agency's opinion of the law "as it applies to the petitioner's particular set of circumstances." Rule 28-105.003, Florida Administrative Code, provides that in making its declaratory statement, "the agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts." Therefore, there are no disputed facts and Intrado is not

seeking to take action against AT&T – the bottom line is a declaration that once a customer is no longer a customer the former carrier can not continue to impose new charges on the former customer or the customer’s new carrier.¹ Thus, if AT&T is to intervene in this proceeding, its role is not to suggest some alternative set of facts upon which the Commission should base its declaratory statement. Rather, AT&T’s role is limited by statute only to any argument as to the law as applied to the facts presented to the Commission by Intrado.

6. For the reasons set forth herein, Intrado requests that the Commission enter an order requiring that any petition to intervene comply with the Uniform Rules in Title 28, Florida Administrative Code, and establishing that any such intervention will be limited to a determination of the law to Intrado’s particular circumstances as set forth in the Petition for Declaratory Statement.

Respectfully submitted,



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Counsel for Intrado Communications, Inc.

¹ Such “new charges” would exclude any prior contractual obligations.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and U.S. Mail this 29th day of February, 2008.

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