

Ruth Nettles

From: Ann Bassett [abassett@lawfla.com]
Sent: Friday, March 14, 2008 4:26 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 080089-TP
Attachments: 2008-03-14, 080889, Intrado's Motion for Leave to Amend Petition for Declaratory Statement.pdf

The person responsible for this electronic filing is:

Floyd R. Self
Messer, Caparello & Self, P.A.
P.O. Box 15579
Tallahassee, FL 32317
(850) 222-0720
fself@lawfla.com

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.

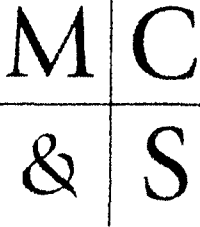
Total Number of Pages is 5

Intrado Communications Inc.'s Motion for Leave to Amend Intrado's Petition for Declaratory Statement

Ann Bassett
Messer, Caparello & Self, P.A.
2618 Centennial Place (32308)
P.O. Box 15579
Tallahassee, FL 32317
Direct Phone: 850-201-5225
Fax No. 850-224-4359
Email Address: <abassett@lawfla.com>
Web Address: <www.lawfla.com>

DOCUMENT NUMBER-DATE

01931 MAR 14 8



MESSER CAPARELLO & SELF, P.A.

Attorneys At Law
www.lawfla.com

March 14, 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

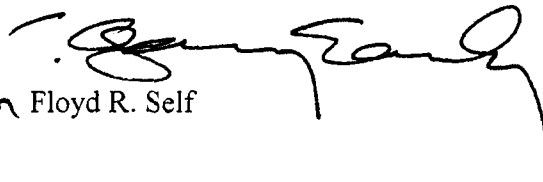
Dear Ms. Cole:

Enclosed for filing on behalf of Intrado Communications Inc. are the following documents:

1. An electronic version of Intrado Communications Inc.'s Motion for Leave to Amend Intrado's Petition for Declaratory Statement; and
2. An electronic version of Intrado Communications Inc.'s Amended Petition for Declaratory Statement.

Thank you for your assistance with this filing.

Sincerely yours,


for Floyd R. Self

FRS/amb
Enclosures
cc: Rebecca Ballesteros, Esq.

DOCUMENT NUMBER-DATE

01931 MAR 14 08

FPSC-COMMISSION CLERK

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 March 14, 2008

MOTION FOR LEAVE TO AMEND
INTRADO'S PETITION FOR DECLARATORY STATEMENT

Intrado Communications Inc. ("Intrado"), pursuant to Rule 28-106.202, Florida Administrative Code, by and through undersigned counsel, hereby moves the Commission for leave to amend the Petition for Declaratory Statement filed in this proceeding and states:

1. On February 8, 2008 Intrado filed its Petition for Declaratory Statement. In its Petition, Intrado posed the following questions on which it sought a declaratory statement:

a. Once a PSAP has selected Intrado to be its local exchange telecommunications network provider of 911 services, does an ILEC have the authority to charge Intrado and/or the PSAP for any of the ILEC's 911 services that have been terminated by the PSAP?

b. Once a PSAP has selected Intrado to be its local exchange telecommunications network provider of 911 services, does an ILEC have the authority to charge Intrado and/or the PSAP for post termination 911 services not currently in the ILEC's tariff?

c. Once a PSAP has selected Intrado to be its local exchange telecommunications network provider of 911 services, does an ILEC have the authority to bundle post-termination 911 charges with other charges that may be charged to Intrado and/or the PSAP?

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2. AT&T has noted in its Motion to Dismiss that the Petition is couched in terms of whether an ILEC can charge Intrado or its customers for services the ILEC no longer provides, thus in its view seeking a declaration of the conduct of another person. As set forth in detail in Intrado's Response to AT&T Florida's Motion to Dismiss, the courts have liberally and broadly construed Section 120.565, Fla. Stat. so as to avoid the elevation of form over substance, thereby helping to enable persons to resolve ambiguities of law arising in the conduct of their daily affairs, to enable persons to secure binding advice as to the applicability of agency-enforced law to a particular set of facts, to enable persons to avoid costly administrative litigation, and to provide guidance to others who may find themselves in the same or similar situations. However, there does appear to be precedent for restating questions in order to avoid any question as to the scope of the declaratory statement and its applicability to the entity filing the Petition.¹

3. In order to avoid any misunderstanding, Intrado believes it advisable to restate the questions posed so as to apply specifically to the actions of Intrado and its customers.

4. Rule 28-106.202, F.A.C., provides that:

A petition or request for hearing may be amended prior to the designation of the presiding officer by filing and serving an amended petition or amended request for hearing in the manner prescribed for filing and serving an original petition or request for hearing. Thereafter the petitioner may amend the petition or request for hearing only upon order of the presiding officer.

Since the Commission has not yet assigned a presiding officer, this amendment is made as a matter of right.

¹ See, *In re: Petition by Board of County Commissioners of Broward County for declaratory statement regarding applicability of BellSouth Telecommunications, Inc. tariff provisions to rent and relocation obligations associated with BellSouth switching equipment building ("Maxihut") located at Fort Lauderdale-Hollywood International Airport on property leased by BellSouth from Broward County's Aviation Department*, Docket No. 0060049-TL, Order No. PSC-06-0306-DS-TL (April 19, 2006).

5. The granting of this motion to amend the Petition for Declaratory Statement will not prejudice the interests of any party to this proceeding since this matter has not progressed beyond pleading.

6. By allowing all issues pertinent to this proceeding to be determined on the merits, the amendment is in the furtherance of justice.

7. Intrado has not abused the privilege of amending its Petition, nor would the amendment be futile.

8. The Amended Petition for Declaratory Statement is attached hereto for filing, if this motion is granted. The amendments are limited to a restatement of the issues in paragraphs 23 and 24 and the "THEREFORE" clause of the Petition.

Respectfully submitted,



FLOYD R. SELF, ESQ.
Messer, Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, Florida 32308
Telephone: (850) 222-0720
Facsimile: (850) 558-0656

and

Rebecca Ballesteros
Associate Counsel
Intrado Communications Inc.
1601 Dry Creek Drive
Longmont, CO 80503
(720) 494-5800 (telephone)
(720) 494-6600 (facsimile)

Counsel for Intrado Communications, Inc.

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 14th day of March, 2008.


Richard Bellak, Esq.
Rosanne Gervasi, Esq.
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Earl Edenfield
Tracy Hatch
c/o Mr. Gregory Follensbee
AT&T Florida Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32303-1556

Dulaney L. O'Roark III
Verizon Florida LLC
5055 North Point Parkway
Alpharetta, GA 30022

Rebecca Ballesteros
Intrado, Inc.
1601 Dry Creek Drive
Longmont, CO 80503

Chérie R. Kiser
Angela F. Collins
Mintz Law Firm
701 Pennsylvania Avenue NW, Suite 90
Washington, DC 20004


Floyd R. Self