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COMMISSION CLERK

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DATE: October 31, 2008
TO: Ann Cole, Commission Clerk - PSC, Office of Commission Clerk
FROM: Lee Eng Tan, Senior Attorney, Office of the General Counsel
RE: RE: Correction to Hard Copy of Post-Hearing Recommendation in Docket No. 070736-TP - Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, 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.

On October 30, 2008, staff filed a Post-Hearing Recommendation in Docket No. 070736-TP. However, due to a print error on pages 9 and 12, the hard copy of the above-referenced recommendation does not match the electronic version filed with the Commission. The filed recommendation contained an earlier version of the recommendation on page 9 and the conclusion language on page 12 in Issue 1(b). The correct version of Issue 1(b) recommendation and conclusion should include the additional language indicated in bold:

If the Commission approves staff's recommendation in Issue 1(a) and finds that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," then staff recommends that the Commission find that AT&T is not required to provide interconnection pursuant to the provisions set forth in §251(c). Moreover, staff recommends that since any resulting agreement between the parties is not pursuant to §251(c), the Commission need not address the remaining 22 issues identified in the Prehearing Order, Order No. PSC-08-0400-PHO-TP.

Therefore, please replace pages 9 and 12 of the filed recommendation with the attached version.

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Cole, Wang, Purris, Williams

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Issue 1(b): Of the services identified in Issue 1(a), for which, if any, is AT&T required to offer interconnection under §251(c) of the Telecommunications Act of 1996?

Recommendation: If the Commission approves staff's recommendation in Issue 1(a) and finds that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," then staff recommends that the Commission find that AT&T is not required to provide interconnection pursuant to the provisions set forth in §251(c). Moreover, staff recommends that since any resulting agreement between the parties is not pursuant to §251(c), the Commission need not address the remaining 22 issues identified in the Prehearing Order, Order No. PSC-08-0400-PHO-TP. (Tan)

Position of the Parties

INTRADO COMM: Intrado Comm is entitled to interconnect its network with AT&T to access the PSTN, which Intrado Comm needs to provide 911/E911 services to Florida counties and PSAPs. Sections 251/252 were designed to promote the type of interconnection and interoperability Intrado Comm seeks.

AT&T: None. AT&T Florida is only obligated to offer §251(c) interconnection for telephone exchange service and exchange access.

Staff Analysis: This issue focuses on whether AT&T is required to offer interconnection to Intrado Comm under §251(a) or §251(c) of the Act. Section 251(a) of the Act describes the general duty of all telecommunications carriers to interconnect, while §251(c) addresses specific obligations imposed only on incumbent local exchange carriers (ILECs). Two aspects of §251(c) are particularly significant:

- Section 251(c)(2) includes a reference to "telephone exchange service;" and
- Section 251(c)(3) addresses the ILEC's obligation to provide access to unbundled network elements (UNEs). In essence, this concern is a "rates" issue since AT&T would be obligated to offer these UNEs to Intrado Comm at Total Element Long-Run Incremental Cost (TELRIC) based rates, as opposed to the more general pricing standard applicable to items provided pursuant to §251(a).

Intrado Comm contends that a §251(c) agreement is appropriate since its service offering meets the definition of "telephone exchange service." It believes AT&T is obligated to offer it cost-based, unbundled access to the elements it wants pursuant to §251(c) of the Act. (Intrado Comm BR at 5) AT&T disagrees with both assertions. (AT&T BR at 5)

AT&T believes Intrado Comm's "Intelligent Emergency Network"™ service is not a "telephone exchange service," and as such, the consideration of interconnection with Intrado Comm pursuant to §251(c) is moot. AT&T summarily contends that Intrado Comm is not providing "telephone exchange service" subject to any portion of §251(c), and is therefore not entitled to a §251(c) interconnection agreement. AT&T further states that "the proper denial of

Conclusion

If the Commission approves staff's recommendation in Issue 1(a) and finds that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," then staff recommends that the Commission find that AT&T is not required to provide interconnection pursuant to the provisions set forth in §251(c). Moreover, staff recommends that since any resulting agreement between the parties is not pursuant to §251(c), the Commission need not address the remaining 22 issues identified in the Prehearing Order, Order No. PSC-08-0400-PHO-TP.

March 6, 2008. The FCC granted Intrado Comm's petition, preempting the jurisdiction of the Virginia Commission in a Memorandum Order and Opinion, issued October 16, 2008, *In the matter of Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.*, FCC WC Docket 08-185, stating that the Virginia Commission explicitly deferred action to the FCC.