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December 16, 2008 – **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-referenced matter is Verizon Florida LLC's Motion for Summary Final Order. 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.) Docket No. 080134-TP
for arbitration to establish an interconnection) Filed: December 16, 2008
agreement with Verizon Florida LLC, pursuant)
to Section 252(b) of the Communications Act)
of 1934, as amended, and Section 364.12,)
F.S.)
_____)

VERIZON FLORIDA LLC'S MOTION FOR SUMMARY FINAL ORDER

Verizon Florida LLC ("Verizon") asks the Commission to issue a summary final order finding that Intrado Communications Inc. ("Intrado") is not entitled to the interconnection it seeks with Verizon under section 251(c) of the Communications Act of 1934, as Amended ("Act").

Under section 120.57(1)(h) of the Florida Statutes and section 28-106.204(4) of the Florida Administrative Code, a summary final order shall be granted if the pleadings demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled as a matter of law to the entry of a final order.¹ The Commission already ruled that Intrado is not entitled to section 251(c) interconnection with AT&T or Embarq for exactly the same 911/E911 services for which Intrado seeks interconnection in this arbitration with Verizon.² The same law applies to Intrado's request for

¹ See also *Complaint Against BellSouth Telecomm., Inc. Seeking Resolution of Monetary Dispute Regarding Alleged Overbilling Under Interconnection Agreement by Saturn Telecomm. Services, Inc.*, Order Granting Motion to Strike and Motion for Summary Final Order, Order No. PSC-05-0702-FOF-TP (June 29, 2005) ("Saturn"); *Complaint and Petition by CAT Comm. Int'l, Inc. Against BellSouth Telecomm., Inc. for Alleged Unlawful Emergency Tel. Service Charge*, Order Granting Motion for Summary Final Order, Order No. PSC-04-0500-FOF-TP (May 14, 2004) ("CAT Comm."); *Request for Arbitration Concerning Complaint of ITCDeltaCom Comm., Inc. Against BellSouth Telecomm., Inc. for Breach of Interconnection Terms*, Order Granting Motion for Summary Final Order, Order No. PSC-00-1540-FOF-TP (Aug. 24, 2000) ("ITCDeltaCom").

² *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),*

interconnection with Verizon, so Verizon is entitled to a summary order ending this arbitration.

I. THE COMMISSION ALREADY DECIDED THAT INTRADO'S 911 SERVICE DOES NOT ENTITLE IT TO SECTION 251(C) INTERCONNECTION.

In this arbitration, Intrado seeks interconnection with Verizon under section 251(c) of the Act,³ just as Intrado sought section 251(c) interconnection with AT&T and Embarq in arbitrations with those companies.⁴ Section 251(c) specifies that an incumbent has the duty to provide interconnection with its network only “for the transmission and routing of telephone exchange service and exchange access.” Intrado has admitted that its 911 service is not exchange access service. (See *AT&T/Intrado Order* at 2.) The key determination in this case, as it was in Intrado’s arbitrations with AT&T and Embarq, is, therefore, whether Intrado is providing “telephone exchange service.”

Telephone exchange service is defined at 47 U.S.C. section 153(47):

364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C., Final Order, Order No. PSC-08-0798-FOF-TP (Dec. 3, 2008) (“AT&T/Intrado 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., Final Order, Order No. PSC-08-0799-FOF-TP (Dec. 3, 2008) (“Embarq/Intrado Order”).

³ Petition of Intrado Comm. for Arbitration Pursuant to Section 252(b) of the Comm. Act of 1934, as Amended, and Section 364.162, Florida Statutes, to Establish an Interconnection Agreement with Verizon Florida LLC (“Intrado/Verizon Petition”) (Filed March 5, 2008).

⁴ 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. (filed Dec. 21, 2007) (“Intrado/AT&T Petition”); 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. (filed Nov. 27, 2007) (“Intrado/Embarq Petition”).

The term “telephone exchange service” means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.⁵

The Commission concluded that for a service to be considered a telephone exchange service under this definition in section 153(47), “it must provide for both the origination and termination of calls.” (*AT&T/Intrado Order*, at 5; *Embarq/Intrado Order*, at 4.) The Commission determined that Intrado’s proposed 911 service (which it calls “Intelligent Emergency Network Service”) does not satisfy this statutory criterion, because it cannot originate calls: “Intrado Comm’s Intelligent Emergency Network is a service that allows a PSAP to receive emergency calls....Intrado Comm provides a service that cannot be used to originate a call.” (*AT&T/Intrado Order* at 4; *Embarq/Intrado Order* at 4.) The Commission explained: “The Intelligent Emergency Network does not offer a PSAP the ability to call back a 911/E911 user, and administrative lines not offered by Intrado Comm would be required to place such a call.” (*AT&T/Intrado Order* at 4; *Embarq/Intrado Order* at 4.) The Commission rejected Intrado’s arguments that its service could be used to originate calls and that it otherwise satisfied the definition of local exchange service for purposes of section 251(c) interconnection. (*Embarq/Intrado Order* at 4; *AT&T/Intrado Order* at 5.)

The 911/E911 services for which Intrado seeks interconnection with Verizon are exactly the same services for which Intrado sought interconnection with AT&T and

⁵ 47 U.S.C.A. § 153(47) (emphasis added).

Embarq. These services are described, in all material respects, in identical terms in Intrado's Petitions for Arbitration with AT&T, Embarq, and Verizon.⁶ Each Petition described 911/E911 service for which Intrado's "end users" would be Public Safety Answering Points ('PSAPs') and other public safety agencies. Intrado uniformly characterized its services as "routing, transmission, and transport of traditional and non-traditional emergency call traffic to the appropriate PSAP." (Verizon/Intrado Petition at 6; AT&T/Intrado Petition at 6; Embarq/Intrado Petition at 6.) In each arbitration, it was clear that Intrado would not be the originating caller's local exchange carrier, but rather handling the emergency calls of other carriers' customers. (See Verizon/Intrado Petition at 22; AT&T/Intrado Petition at 21-22; Embarq/Intrado Petition at 18-19.)

Intrado's Price List on file with the Commission describes its 911/E911 services consistently with Intrado's Petitions. It states that Intrado's "Intelligent Emergency Network Services are telecommunications services that permit a Public Safety Answering Point ("PSAP") to receive emergency calls placed by dialing the number 9-1-1 and/or emergency calls originated by personal communications devices."⁷ Intrado explains that its services "support interconnection to other telecommunications service providers for the purpose of receiving emergency calls originated in their networks." (Price List, § 5.1.) It also specifies that: "Intelligent Emergency Network Service is not intended as a total replacement for the local telephone service of the various public safety agencies which may participate in the use of this service. The Customer must subscribe to additional local exchange services for purposes of placing administrative

⁶ Compare, e.g., Verizon/Intrado Petition for Arbitration at 3-9, 18-24, and AT&T/Intrado Petition for Arbitration at 3-9, 18-23 and Embarq/Intrado Petition at 3-9, 15-20.

⁷ Intrado Florida Price List No. 1, § 5.1

outgoing calls and for receiving other calls” (aside from 911 calls). (Intrado Price List, § 5.2.3; see *also* § 5.2.9.D (the Customer’s subscription “to local exchange service at the PSAP location for administrative purposes, for placing outgoing calls, and for receiving other calls” is a condition of receiving Intrado’s 911 services).)

Intrado’s Price List applies statewide, so the 911 services Intrado will provide—and for which it seeks section 251(c) interconnection with Verizon—are necessarily the same 911 services for which Intrado sought section 251(c) interconnection from Embarq and AT&T. As noted, all three of Intrado’s petitions for arbitration describe in the same way the 911 services for which Intrado sought to compel the incumbents to provide section 251(c) interconnection. There is, therefore, no genuine issue of material fact that might prevent the Commission from granting this Motion for Summary Order. Although the parties may disagree about how Intrado’s 911 services should be classified as a legal matter, there is no disagreement about what the services are. Verizon does not dispute that Intrado’s 911 services are, as a factual matter, just as they are described by Intrado in its Petition and its Price List. But the Commission has already found that those services, as a legal matter, do not entitle Intrado to interconnect with incumbents under section 251(c) of the Act.

Given the identity of the services for which Intrado is seeking interconnection here and those for which it sought interconnection in the AT&T and Embarq arbitrations, the Commission must draw the same legal conclusion that it did in those cases. Verizon has a right to a summary final order that it, like Embarq and AT&T, has no obligation to provide Intrado section 251(c) interconnection for Intrado’s 911/E911 services. The Commission should, as it did in those cases, advise Intrado that it may

seek commercial agreement terms to the extent it has a legitimate need for interconnection with Verizon.⁸

The fact that the issues list for this arbitration did not, like Embarq's and AT&T's issues lists, state a distinct issue concerning Intrado's entitlement to section 251(c) interconnection has no bearing on this Motion. Regardless of the differences in how the arbitration issues were framed in the orders establishing procedure in Intrado's three arbitrations, the 911/E911 services for which it seeks interconnection here are exactly the same services for which Intrado sought interconnection from Embarq and AT&T, and Verizon has consistently maintained that it has no obligation to provide Intrado anything to which it is not entitled under section 251(c).⁹ Indeed, Florida law confirms that the Commission cannot impose requirements in interconnection arbitrations that are inconsistent with sections 251 and 252 of the Act and the FCC's rules implementing

⁸ *AT&T/Intrado Order*, at 7, 9; *Embarq/Intrado Order* at 6, 8. The Commission observed that it has only arbitrated issues outside of section 251(c) when both parties agreed to Commission action. (*AT&T/Intrado Order*, at 7; *Embarq/Intrado Order*, at 6. Here, neither Verizon nor Intrado has asked the Commission to arbitrate interconnection terms under section 251(a) and Verizon would not agree that any such proceeding is appropriate.

⁹ See, e.g., Verizon's Response to Intrado's Petition for Arbitration ("Response"), Att. 1, Issue 1 (filed March 31, 2008). Verizon's Response, as well as its Motion to Hold in Abeyance Intrado's Petition Arbitration ("Abeyance Motion," filed in this Docket on March 31, 2008), noted that the threshold issue of Intrado's right to arbitration and section 251(c) interconnection was pending before the FCC. At that time, the Virginia Corporation Commission had deferred to the FCC Intrado's arbitration with Embarq, so the FCC could determine the issue of Intrado's entitlement to section 251(c) interconnection. Response at 1; Abeyance Motion, at 1-3. Since then, the FCC granted Intrado's request to preempt the Virginia Commission's jurisdiction over the Embarq/Intrado arbitration, as well as Intrado's request to preempt the Virginia Commission's jurisdiction over its arbitration with Verizon. In addition, Intrado's arbitrations with Embarq and Verizon have been consolidated at the FCC. *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 Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq)*, WC Docket No. 08-33; *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. (collectively, Verizon)*, WC Docket No. 08-185, Order, DA 08-2682 (rel. Dec. 9, 2008).

those provisions.¹⁰ And as the Commission has repeatedly recognized, it has only the powers granted by statute.¹¹ “Subject matter jurisdiction arises by virtue of law only; it is conferred by constitution or statute and cannot be created by waiver or acquiescence.”¹²

The analysis in this case is, therefore, exactly the same as it was in Intrado’s arbitrations with Embarq and AT&T. The Commission has already ruled that it cannot force incumbents into section 251(c) interconnection agreements for Intrado’s 911/E911 services, because they are not “telephone exchange service and exchange access.” The Commission cannot apply the same law to the same services and reach a different conclusion.

The purpose of a summary final order is to avoid the expense and delay of litigation when no dispute exists as to any material fact.¹³ This objective is best served by granting such an order early in the proceeding. It would be pointless to waste any more resources on this arbitration, when the Commission has already ruled that Intrado has no right to section 251(c) interconnection for the 911/E911 services for which it seeks interconnection with Verizon.

¹⁰ Fla. Stat. ch. 364.012(2).

¹¹ See, e.g., *Petition for Expedited Enforcement of Interconnection agreement with Verizon Florida Inc. by Teleport Comm. Group Inc. and TCG South Florida*, Order Granting Motion to Dismiss, Order No. PSC-02-1705-FOF-TP, at 9-10 (Dec. 6, 2002); *Complaint and Petition by Lee County Elec. Coop., Inc. for an Investigation of the Rate Structure of Seminole Elec. Coop., Inc.*, Order Dismissing Complaint and Petition for Lack of Subject Matter Jurisdiction, Order No. PSC-01-0217-FOF-EC, at 17-18 (Jan. 23, 2001).

¹² *Complaint and Petition of John Charles Heekin Against Florida Power & Light Co.*, Order No. PSC-99-1054-FOF-EI (May 24, 1999), at 7, citing *Board of Trustees of Internal Improvement Trust Fund of State v. Mobil Oil Corp.*, 455 So.2d 412 (Fla. 2d DCA 1984), quashed in part on other grounds by *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339 (Fla. 1986).

¹³ See *Saturn*, *supra*, at 26; *ITCDeltaCom*, *supra*, at 20-21.

II. POLICY CONSIDERATIONS SUPPORT GRANTING THIS MOTION FOR SUMMARY FINAL ORDER.

The Commission has recognized that “policy considerations should be taken into account in ruling on a motion for summary final order.”¹⁴ “Because of this Commission’s duty to regulate in the public interest, the rights of not only the parties must be considered, but also the rights of the Citizens of the State of Florida are necessarily implicated, and the decision cannot be made in a vacuum.”¹⁵

In this case, policy considerations strongly favor granting this Motion for Summary Final Order. The Commission’s decisions not to proceed with Intrado’s arbitrations with AT&T and Embarq included the same discussion of “Public Interest Considerations.” (*Embarq/Intrado Order*, at 7-8; *AT&T/Intrado Order*, at 8-9.) There, the Commission observed that “emergence of a competitive 911/E911 provider in the Florida marketplace” presents the possibility of “potential unintended consequences that affect more than just the current parties to this docket, impacting all carriers in Florida, including wireless and VoIP providers.” (*Embarq/Intrado Order*, at 7; *AT&T/Intrado Order*, at 8.) Therefore, the Commission determined that an interconnection arbitration was not the appropriate forum to consider matters involving 911 services in Florida:

Sections 365.171-175, F.S., address Florida 911/E911 plan. Any changes involving 911/E911 require the facilitation and cooperation of all affected agencies and entities to resolve any changes or complications that affect 911/E911 in Florida. Decisions affecting the provision of 911/E911 service

¹⁴ *Complaint of Supra Telecomm. and Information Systems, Inc. Against BellSouth Telecomm., Inc., etc.*, Order Granting Consolidation of Dockets and Denying Motion for Final Summary Order and Motion for Reconsideration, Order No. PSC-05-0157-PCO-TP, at 12 (Feb. 8, 2005) (“*Supra*”); *Petition for Relief from Carrier-of-Last Resort (COLR) Obligations Pursuant to Section 264.025(6)(d), F.S., for Villages of Avalon, Phase II, in Hernando County, by BellSouth Telecomm., Inc. d/b/a AT&T Florida*, Order No. PSC-07-1008-PAA-TL, at 4-5 (Dec. 19, 2007).

¹⁵ *Supra*, at 12-13, quoting *Application for Certificate to Operate a Water and Wastewater Utility in Charlotte and Desoto Counties by Lake Suzy Utilities, Inc., etc.*, Order No. PSC-98-1538-PCO-WS (Nov. 20, 1998).

in Florida are made by several different agencies, including the Department of Management Services, local and state officials, providers and PSAPs. Accordingly, any discussion regarding the provisioning of competitive 911/E911 service in Florida requires that all potentially affected parties be consulted and afforded an opportunity to weigh in on these vital matters.

(Embarq/Intrado Order at 8; AT&T/Intrado Order, at 9.)

Exactly the same policy considerations that infused Intrado's arbitrations with AT&T and Embarq are present in this arbitration with Verizon. Just as it was not in the public interest to make decisions affecting 911/E911 services and implicating Florida's 911/E911 statutes in Intrado's bilateral arbitrations with AT&T and Embarq, it is not in the public interest to do so in this arbitration.

Respectfully submitted on December 16, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via U.S. mail on
December 16, 2008 to:

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