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To: Filings@psc.state.fl.us
Cc: Carver, J; Gurdian, Manuel; Tracy Hatch
Subject: Florida Docket No. 070736-TP
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Attachments: motion.pdf

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B. Docket No. 070736-TP: In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida

C. AT&T Florida
 on behalf of J. Phillip Carver

D. 8 pages total (includes letter, certificate of service and pleading)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Dismiss Or, In the Alternative, To Hold In Abeyance, Intrado Communications Inc.'s Petition for Arbitration

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January 15, 2008

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
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**Re: Docket No. 070736-TP: In the Matter of the Petition of
Intrado Communications Inc. for Arbitration Pursuant to
Section 252(b) of the Communications Act of 1934, as
Amended, to Establish an Interconnection Agreement with
BellSouth Telecommunications, Inc. d/b/a AT&T Florida**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Dismiss Or, In the Alternative, To Hold In Abeyance, Intrado Communications Inc.'s Petition for Arbitration, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



J. Phillip Carver

cc: All parties of record
Gregory Follensbee
E. Earl Edenfield, Jr.
Lisa S. Foshee

CERTIFICATE OF SERVICE
Docket No. 070736-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and Federal Express this 15th day of January, 2008 to the following:

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of Intrado Communications)
Inc. for Arbitration Pursuant to Section 252(b) of the)
Communications Act of 1934, as amended, to Establish) Docket No. 070736-TP
an Interconnection Agreement with BellSouth)
Telecommunications, Inc. d/b/a AT&T Florida)

**AT&T FLORIDA'S MOTION TO DISMISS
OR, IN THE ALTERNATIVE, TO HOLD IN ABEYANCE,
INTRADO COMMUNICATIONS INC.'S PETITION FOR ARBITRATION**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") hereby moves to dismiss the Petition for Arbitration ("Petition") of Intrado Communications, Inc. ("Intrado"). In the alternative, AT&T Florida respectfully requests that the Florida Public Service Commission ("Commission") hold the Petition in abeyance so that the parties can negotiate the issues identified in the Petition.

I. INTRODUCTION

1. The parties have not negotiated the issues Intrado has petitioned the Commission to arbitrate. Intrado admits that it first presented to AT&T the contract language it now seeks to arbitrate on December 18, 2007, only three days before it filed the Petition. (Pet. at 15). It is no wonder then that, as Intrado acknowledges, "[t]he Parties have been unable to reach agreement on any issue" (Pet. at 9), or that for each of the 36 alleged "unresolved" issues identified in the Petition, Intrado states that AT&T Florida's position is "unclear" or "unknown."

2. As the Commission is well aware, conducting a multi-issue arbitration is arduous for all involved, even when the parties have negotiated extensively and understand each other's positions. This process would become unmanageable if the Commission were to try to arbitrate dozens of issues that the parties have not negotiated, especially considering that it is currently not even clear whether the parties actually disagree or, if they do, to what extent. Fortunately, the

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Telecommunications Act of 1996 (“1996 Act” or “Act”) does not require the Commission to waste its resources on such an exercise. Instead, the Act contemplates that the Commission will arbitrate only “open issues” arising from negotiations, not a laundry list of potential issues presented by a Petitioner who has not negotiated them with the Respondent. Accordingly, the Commission should dismiss the Petition.

3. In the alternative, if the Commission prefers to keep the proceeding open, it should hold the proceeding in abeyance so that the parties can negotiate an interconnection agreement in accordance with the 1996 Act. To the extent that open issues emerge from the negotiations, the parties jointly can identify them and proceed with the arbitration.

II. DISCUSSION

4. Under the 1996 Act, an incumbent local exchange carrier (“ILEC”), such as AT&T Florida, has the duty to negotiate and enter into binding interconnection agreements with requesting telecommunications carriers. *See* 47 U.S.C. §§ 251(c)(1) and 252(a). The requesting carrier has the same duty to negotiate in good faith. *Id.* § 251(c)(1). The 1996 Act allots a substantial time period (135 days to 160 days) for negotiation. 47 U.S.C. § 252(b)(1). Only after negotiations occur may either party “petition [the] State commission to arbitrate any open issues.” *Id.* Notably, even though the 1996 Act is replete with deadlines designed to minimize delay in getting an effective interconnection into place,¹ neither party is permitted to petition for arbitration before day 135. Obviously, Congress contemplated that substantial negotiations would occur prior to the filing of a Petition for Arbitration.²

¹ *E.g.*, 47 U.S.C. § 252(b)(3) (25 days for Response to Petition); § 252(b)(4)(C) (nine months from request to negotiate for completion of arbitration); § 252(e)(4) (30 days for approval of arbitrated agreement and 90 days for negotiated agreement).

² *See Verizon North v. Strand*, 309 F.3d 935, 940 (6th Cir. 2002) (recognizing that “private negotiation . . . is the centerpiece of the Act”).

5. The chronology recited in the Petition makes clear that no meaningful negotiations have occurred in the instant case.³ Intrado requested negotiation on May 18, 2007. (Pet. at 12). Following additional communications, AT&T provided Intrado with the AT&T 9-State template interconnection agreement (“AT&T 9-State Agreement”) on August 30, 2007. This template agreement contains AT&T’s Florida’s baseline interconnection terms and conditions for Florida. (*Id.* at 13). Intrado responded to this template by providing, on October 11, 2007, changes to certain portions of this agreement. However, Intrado also sent to AT&T on December 18, 2007 a marked up version of AT&T’s 13-state template interconnection agreement (“AT&T 13-State Agreement), which is currently the template for use in AT&T State’s outside of the Southeast region.⁴ Thus, Intrado provided to AT&T the changes that reflect the positions it takes in this arbitration only three days before filing the Petition for Arbitration on December 21, 2007, using an agreement that is not currently available for use in the Southeast region.

6. AT&T Florida has had virtually no opportunity to respond to Intrado’s positions as set forth in its changes to the AT&T 13-State Agreement. Moreover, by providing its changes in a format not used in the Southeast region (and which AT&T Florida has no obligation to negotiate from), Intrado has complicated the process even more. For these reasons, as the Petition states, “[t]he Parties have been unable to reach agreement on any issue,” and Intrado has no idea of AT&T Florida’s positions on any of the 36 “unresolved” issues. For all Intrado knows, AT&T Florida may be willing to accommodate many of its requests. The way to find out

³ Although AT&T Florida may not agree with all aspects of Intrado’s recitation of this chronology in its Petition, the Petition does accurately reflect the fact that there was a great deal of activity, and contact between the parties, prior to the Petition being filed. However, rather than reiterating this activity, AT&T Florida focuses herein on the specific facts most directly related to the current situation.

⁴ The distinction between the 9-state and 13-state Interconnection Agreements is important because, prior to December 29, 2006, AT&T and BellSouth were different companies with different products provided by way of different networks. These differences resulted in material differences in the template Interconnection Agreements offered by the two companies. Some of those differences survive in the current 9 State and 13 State Agreements.

is for the parties to negotiate. Instead, Intrado asks the Commission to waste its resources by arbitrating *every* matter Intrado raises, and to do so before the parties have even discussed them.

7. Intrado alleges that AT&T was unwilling to negotiate in good faith (Pet. at 16). AT&T Florida denies this claim. Moreover, if Intrado thought AT&T had failed to negotiate in good faith, the proper solution was to request the Commission's assistance *during the negotiation period*, not to let that period lapse and then ask the Commission to arbitrate all the issues (and, in all likelihood, non-issues) that Intrado has raised.

Section 252(a)(2) of the 1996 Act provides, "Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation." 47 U.S.C. § 252(a)(2).

A request for mediation is the appropriate course for a carrier that finds itself in the position Intrado claims it was in.⁵

8. The undeniable fact is that the parties have not meaningfully negotiated the issues on which Intrado has petitioned for arbitration. Although the parties obviously disagree as to who is responsible for the current situation, it really does not matter. For present purposes, all that really matters is that these parties are not ready to arbitrate, and the Commission should not be placed in the position of having to deal with the consequences of this fact. The Petition for Arbitration should be dismissed, and the Commission should require Intrado to comply with the 1996 Act by engaging in negotiations with AT&T Florida. After these negotiations, Intrado would then be free to pursue arbitration on any issues that remain unresolved and appropriate for arbitration.

⁵ See *Atl. Alliance Telecom., Inc. v. Bell Atl.*, No. 99 CV 4915 (ARR), 2000 U.S. Dist. LEXIS 19649, **13-14 (E.D.N.Y. Apr. 17, 2000) ("The provision for mediation by the state commission lends itself to resolution of complaints [for failure to negotiate in good faith] such as plaintiff's. Under § 252(a), plaintiff could have asked the state commission to participate in the negotiations at any time after the initial request, thereby forcing defendant to the table.").

9. If the Commission prefers not to close this docket, it should at least hold the Petition in abeyance so that the parties can negotiate. If the parties are unable to reach complete agreement on all issues after these negotiations, the parties would at least then be able to identify the remaining open issues for arbitration.⁶ In this regard, AT&T Florida suggests that the Commission hold the proceeding in abeyance for a set period of time, but not less than 60 days, to allow negotiation.⁷ Further, the parties should be directed to use their best efforts to develop, to the extent necessary, a joint list of issues that remain unresolved at the conclusion of this period.

III. CONCLUSION

10. For the reasons set forth above, AT&T Florida respectfully requests that the Commission dismiss Intrado's Petition for Arbitration, or in the alternative, hold the Petition in abeyance to allow the parties time to negotiate the issues as required by law.

⁶ Moreover, as noted in AT&T Florida's Response and the Issue Matrix thereto, AT&T Florida believes that at least some of the issues raised by Intrado are not the proper subject of an arbitration pursuant to § 252 of the Act. An additional period in which the parties will negotiate would allow AT&T to determine whether there are any such issues, and to refine its responses accordingly.

⁷ If the negotiation starts from the AT&T 9 State redline, 60 days could well be enough time to allow the parties to reach all possible agreements. If the negotiation starts from the AT&T 13 State Agreement, much more time will be necessary to conform the agreement to the pricing and processes that exist in Florida to accommodate technical and OSS limitations as well as different pricing structures.

Date January 15, 2008

AT&T FLORIDA



E. EARL EDENFIELD, JR.

MANUEL A. GURDIAN

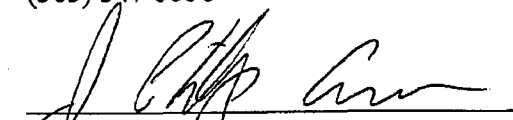
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