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January 22, 2008

**BY HAND DELIVERY**

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

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Re: Docket No. 070736-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Intrado Communications Inc. is are an original and fifteen copies of Intrado Communications Inc.'s Response in Opposition to Motion to Dismiss or, in the Alternative, to Hold in Abeyance in the above referenced docket.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

FRS/amb  
Enclosure  
cc: Rebecca Ballesteros, Esq.  
Parties of Record

- CMP
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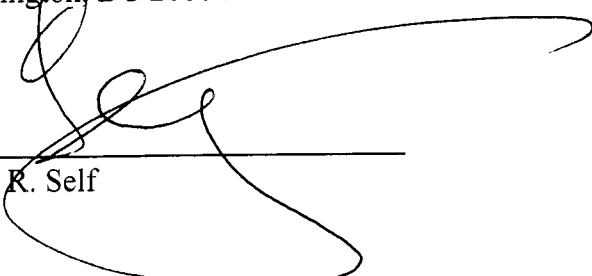
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and U.S. Mail this 22<sup>nd</sup> day of January, 2008.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Petition	)	
of Intrado Communications Inc. for Arbitration	)	Docket No. 070736-TP
Pursuant to Section 252(b) of the Communications Act	)	
of 1934, as amended, and Section 364.162, Florida	)	
Statutes, to Establish an Interconnection Agreement with	)	Filed: January 22, 2008
BellSouth Telecommunications, Inc. d/b/a AT&T Florida	)	

**RESPONSE IN OPPOSITION TO  
MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO HOLD IN ABEYANCE**

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Dated: January 22, 2008

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	)	

**RESPONSE IN OPPOSITION TO  
MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO HOLD IN ABEYANCE**

Intrado Communications Inc. (“Intrado”), through its attorneys and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Response in Opposition to the Motion to Dismiss or, in the Alternative, to Hold in Abeyance (“Motion”) filed by BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T”) in which AT&T requests that the Florida Public Service Commission (“Commission”) dismiss the Petition for Arbitration (“Petition”) filed by Intrado in the above-captioned proceeding, or in the alternative, hold the proceeding in abeyance.

AT&T’s Motion is untimely filed and should be dismissed for that reason alone. Further, AT&T has failed to demonstrate as a matter of law why its Motion should be granted.<sup>1/</sup> Intrado has fully complied with the requirements of the Communications Act of 1934, as amended (“Act”), governing negotiation and arbitration of interconnection agreements. AT&T’s claims that additional negotiations between the Parties are required before the Commission can arbitrate the issues presented in Intrado’s Petition are merely a continuation of AT&T’s efforts to shield

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<sup>1/</sup> AT&T indicates in a footnote that some of the issues raised by Intrado are not subject to arbitration pursuant to Section 252. *See* AT&T Motion at n.6. AT&T, however, does not elaborate on which issues it refers to or provide any reasoning for this statement. To the extent that such issues were not included in AT&T’s Motion, AT&T has waived its right to seek dismissal of those issues at a later date.

from competition its entrenched monopoly over the provision of local exchange services in its Florida service territory. Indeed, Intrado twice attempted in the last month to engage in further negotiations with AT&T, and AT&T has either ignored or rejected both of those attempts. The Commission should deny AT&T's Motion and proceed to resolve the issues identified in Intrado's Petition to ensure Florida consumers and public safety agencies can receive the benefits of Intrado's competitive service offerings as contemplated by the Act and Florida law.

**I. AT&T'S MOTION TO DISMISS SHOULD BE REJECTED AS UNTIMELY AND FOR ITS FAILURE TO DEMONSTRATE AS A MATTER OF LAW WHY INTRADO'S PETITION SHOULD BE DISMISSED**

Rule 28-106.204(2), Florida Administrative Code, requires that a motion to dismiss a petition shall be filed no later than twenty days after service of the petition on the party. Intrado's Petition was filed with the Commission on December 21, 2007, Document No. 11119, and pursuant to the certificate of service, copies of the Petition were served on AT&T on December 21, 2007, electronically via email and paper copies via overnight delivery (also received by AT&T's representatives on December 21, 2007). Rule 28-106.103, Florida Administrative Code, provides that for the purpose of computing time, one business day shall be added to the response time when service is by overnight courier and no additional time shall be added when service is via electronic mail. Assuming the more generous computation of time for any AT&T motion to dismiss, such a response was due no later than January 11, 2008.

AT&T filed its Motion on January 15, 2008 - *four days past* the twenty-day period specified in the Commission's rules. This Commission has consistently denied motions to dismiss as untimely filed when they have been filed at any time beyond the twenty-day time

period specified in Rule 28-106.204(2).<sup>2/</sup> There are no statutory provisions providing for a different time to file a motion to dismiss and AT&T did not seek an extension of time of the twenty-day deadline. Thus, there is no basis for granting the dismissal requested by AT&T. Accordingly, AT&T's Motion must be denied as untimely filed.

Moreover, this Commission has ruled that, in order to sustain a motion to dismiss, "the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted."<sup>3/</sup> When determining the sufficiency of the Petition, the Commission may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side.<sup>4/</sup> In the arguments presented, AT&T's Motion fails to demonstrate as a matter of law any basis for dismissing Intrado's Petition. Accordingly, AT&T's Motion should be denied.

## **II. INTRADO FULLY COMPLIED WITH THE REQUIREMENTS OF THE ACT TO NEGOTIATE AND ARBITRATE WITH AT&T**

AT&T's attempt to evade and further delay its interconnection obligations should be rejected. Intrado's conduct during its negotiations with AT&T and the exercise of its rights

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<sup>2/</sup> See, e.g., *Complaint of BellSouth Telecommunications, Inc. against Miami-Dade County for Alleged Operation of a Telecommunications Company in Violation of Florida Statutes and Commission Rules*, Order No. PSC-05-0847-FOF-TL, Docket No. 050257-TL (Aug. 19, 2005) ("Additionally, we find that the County failed to file its Motion within the 20 days required pursuant to Rule 28-106.204(2), Florida Administrative Code. The County was served with BellSouth's Complaint on May 2, 2005. A timely Motion to Dismiss would need to have been filed by May 23. The County filed its Motion on June 2, 2005. Consequently, the Motion to Dismiss shall be denied because it was not timely filed."); see also Order No. PSC-99-0488-PCO-WU, Docket No. 960444-WU (Mar. 8, 1999) (motion to dismiss denied); Order No. PSC-98-1160-PCO-WS, Docket No. 971663-WS (Aug. 25, 1998) ("we hereby deny OPC's motion to dismiss as untimely").

<sup>3/</sup> *Complaint against KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC for Alleged Failure to Pay Intrastate Access Charges pursuant to Its Interconnection Agreement and Sprint's Tariffs and for Alleged Violation of Section 364.16(3)(a), F.S., by Sprint-Florida, Incorporated*, Order No. PSC-04-1204-FOF-TP (Dec. 3, 2004) (citing *Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc.*, 95 FPSC 5:339 (1995) and *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993)).

<sup>4/</sup> *Id.*

under the Act to file its Petition fully complied with the process envisioned by Congress as outlined in the Act. Dismissing the Petition or holding the arbitration proceeding in abeyance would be inconsistent with the law and contrary to the interests of Florida consumers. Indeed, if AT&T truly wanted additional time to negotiate with Intrado, it would not have rejected Intrado's prior requests to do so. AT&T's delay tactics should not be condoned. AT&T's Motion should be denied.

**A. The Section 251/252 Process Was Developed to Address the Uneven Bargaining Power between Incumbents and New Entrants**

When Congress amended the Act in 1996 to open local exchange markets to competition,<sup>5/</sup> it established the Section 251/252 negotiation and arbitration process. Recognizing that incumbent local exchange carriers ("ILECs"), such as AT&T, would have the incentive to thwart competition, Congress and the Federal Communications Commission ("FCC") conferred upon competitive carriers not only a right to interconnect with the incumbent, but the right to do so on fair and pro-competitive terms. Interconnection regulations have thus been developed to compensate for the uneven bargaining power that exists between competitors and incumbents, such as Intrado and AT&T. Congress has established varying categories of rights and obligations for different types of carriers and made a deliberate decision in crafting Section 251 to impose certain requirements only on incumbent carriers in order to facilitate the entry of competitors.<sup>6/</sup> The Act requires AT&T, as an ILEC, to negotiate in good faith the terms

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<sup>5/</sup> Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151, *et seq.* (1996)).

<sup>6/</sup> *Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech Illinois before the Illinois Commerce Commission; et al.*, 13 FCC Rcd 1755, ¶ 3 (1997) ("*Low Tech Preemption Order*"). For example, "telecommunications carriers" are required to interconnect directly or indirectly under Section 251(a), 47 U.S.C. § 251(a), while only "local exchange carriers" are obligated to provide certain services under Section 251(b). 47 U.S.C. § 251(b). Similarly, Section 251(c) imposes additional obligations on "incumbent local exchange carriers." 47 U.S.C. § 251(c).



and conditions of interconnection agreements with competitive carriers to fulfill AT&T's obligations under the Act.<sup>7/</sup>

Section 252 of the Act provides additional benefits to competitors. Recognizing that commercial negotiations would be difficult because the new entrant would have “nothing that the incumbent needs” and so “has little to offer the incumbent in a negotiation,”<sup>8/</sup> Congress also established a procedure for arbitration of any disputes arising from the negotiations between the ILEC and the competitor.<sup>9/</sup> The statutory framework was designed to protect competitive local exchange carriers from experiencing unreasonable delays in entering the marketplace formerly controlled exclusively by the incumbent.<sup>10/</sup> Congress's intent in providing for arbitration was to give competitors more leverage in the negotiation process.<sup>11/</sup> Unlike commercial negotiations where both parties may have an incentive to reach agreement, ILECs have generally demonstrated a reluctance to abide by the law, and thus, arbitration is necessary to ensure that competitors without bargaining power have their rights protected. The language and design of Section 252 thus seeks to address the very unequal bargaining power manifest in negotiations

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<sup>7/</sup> 47 U.S.C. § 251(c)(1). Those obligations include the duty: (1) to provide interconnection; (2) to make available access to unbundled network elements; (3) to offer retail services for resale at wholesale rates; and (4) to provide for the collocation of facilities. 47 U.S.C. §§ 251(c)(2)-(4), (6).

<sup>8/</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 134 (1996) (“*Local Competition Order*”) (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

<sup>9/</sup> 47 U.S.C. §§ 251, 252.

<sup>10/</sup> See *Atlantic Alliance Telecommunications, Inc. v. Bell Atlantic*, 2000 U.S. Dist. LEXIS 19649, 99-CV-4915 (ARR) (E.D. Va 2000) (noting that “[t]he tight schedule set out in the Act manifests an intention of Congress to resolve disputes expeditiously” and Congress’ desire to open up local exchange markets to competition without undue delay) (quoting *AT&T Communications Sys. v. Pacific Bell*, 203 F.3d 1183, 1186 (9th Cir. 2000)) and that “the legislative history explains that the purpose of the Act is ‘to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition’” (quoting H.R. Conf. Rep. No. 104-458, at 113 (1996) reprinted in 1996 U.S.C.C.A.N. 10, 124)).

<sup>11/</sup> *Local Competition Order* ¶ 15 (the “statute addresses this problem [of the ILEC’s “superior bargaining power”] by creating an arbitration proceeding in which the new entrant may assert certain rights”).

between ILECs and competitors in order to advance Congress's goals of increased competition.<sup>12/</sup>

In Section 252 of the Act, Congress established a specific statutory scheme -- with definitive time frames and deadlines -- for negotiating and arbitrating interconnection agreements. Section 252(b)(4)(C) requires the Commission to conclude the arbitration proceeding no later than nine (9) months after the date on which AT&T received Intrado's request for interconnection pursuant to Section 251(c).<sup>13/</sup> The Commission also has recognized its statutory obligation to complete the arbitration proceeding within nine months from the request for negotiation.<sup>14/</sup> It is well established that statutory deadlines cannot be waived or extended except in very limited circumstances.<sup>15/</sup> Indeed, the legislative history of Section 252 indicates that Congress sought strict adherence to the statutory deadlines<sup>16/</sup> and the FCC has found "that the language of [S]ection 252 suggests that Congress intended that the process of negotiating and, when necessary, arbitrating interconnection agreements would have some definite end."<sup>17/</sup>

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<sup>12/</sup> *Local Competition Order* ¶ 15 (the "statute addresses this problem [of the incumbent's "superior bargaining power"] by creating an arbitration proceeding in which the new entrant may assert certain rights"); *see also id.* ¶ 134 (noting that because it is the new entrant's objective to obtain services and access to facilities from the incumbent and thus "has little to offer the incumbent in a negotiation," the Act creates an arbitration process to equalize this bargaining power).

<sup>13/</sup> 47 U.S.C. § 252(b)(4)(C).

<sup>14/</sup> *See, e.g., Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc.*, Order No. PSC-01-1180-FOF-TI, Docket No. 001305-TI (May 23, 2001).

<sup>15/</sup> *Reuters, Ltd. v. FCC*, 781 F.2d 946, 951 (D.C. Cir. 1986) (citing *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976)).

<sup>16/</sup> *Armstrong Communications, Inc. Petition for Relief Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 and Request for Additional Relief*, 13 FCC Rcd 871, ¶ 11 (1998).

<sup>17/</sup> *Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 12 FCC Rcd 15594, ¶ 29 (1997). For that reason, a state commission "fails to act" if it does not complete arbitration of an interconnection agreement within nine months as set forth in the Act. *See Low Tech Preemption Order* ¶ 5.

It is within this framework that Intrado requested interconnection negotiations, negotiated with AT&T in good faith, and later filed its Petition with the Commission within the statutory window when it became clear that the Parties would be unable to reach a mutually beneficial negotiated agreement. Contrary to the structure established by Congress, AT&T argues that the Commission should support an interconnection approach that would give AT&T ultimate control over the negotiation process.<sup>18/</sup> Intrado cannot offer service without interconnecting to the public switched telephone network (“PSTN”) and AT&T is one of the dominant gatekeepers to that network. If Intrado were required to wait until AT&T engaged in effective, constructive negotiations of an agreement that is beneficial to both Parties prior to filing for arbitration, Intrado’s rollout likely would be delayed indefinitely. The Act was specifically designed to avoid the abuse of such power on the part of ILECs.

AT&T’s citation to *Strand* in support of its dismissal or abeyance request is inapposite.<sup>19/</sup> There is nothing premature or flawed about Intrado’s Petition, and Intrado’s approach to the arbitration is precisely what Congress envisioned the process would be when it established the Act. While the *Strand* court indicated that the “first instance” of the 251/252 process should be private negotiations, the court made clear that the ability to petition the state commission for arbitration was also an important part of the statutory regime created by Congress.<sup>20/</sup> Denying or delaying resolution of Intrado’s Petition would therefore be contrary to the objectives of Congress in creating the statutory time frames of the Act, which were established to ensure Florida consumers receive the benefits of competition in a timely manner as the public interest requires.

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<sup>18/</sup> AT&T Motion at 3-4.

<sup>19/</sup> AT&T Motion at 2 (citing *Verizon North, Inc. v. Strand*, 309 F.3d 935 (6th Cir. 2002)).

<sup>20/</sup> *Strand*, 309 F.3d at 939-40.

Intrado cannot be held hostage to AT&T's unwillingness to effectively negotiate, which ultimately dictates the ability of Intrado to deploy its services in Florida.<sup>21/</sup> Intrado is poised to offer competitive local exchange services in Florida that include an alternative, IP-based technology that will "enable the public safety community to focus on future needs rather than requiring more from legacy systems, offer more redundancy and flexibility, and contribute greatly to improving compatibility between public safety systems that operate using different proprietary standards."<sup>22/</sup> AT&T's attempts to game the system and further delay competition should be rejected.

**B. Intrado Has Attempted to Negotiate with AT&T in Accordance with the Requirements of Section 252**

The facts reflect that Intrado has acted in good faith to negotiate an interconnection agreement with AT&T as required by Section 252. Under the Act and the FCC's rules, both parties to a negotiation are required to negotiate in good faith.<sup>23/</sup> The FCC determined that some minimum requirements of good faith negotiation are needed "to address the balance of the incentives between the bargaining parties" in order to "realize Congress's goal of enabling swift market entry by new competitors."<sup>24/</sup> The decision whether a party has acted in good faith is made largely on a case-by-case basis in light of all of the facts and circumstances underlying the negotiations.<sup>25/</sup> AT&T has not demonstrated that Intrado engaged in such conduct. Rather, there

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<sup>21/</sup> Cf. *Local Competition Order* ¶ 148 (stating that "intentionally obstructing negotiations also would constitute a failure to negotiate in good faith, because it reflects a party's unwillingness to reach agreement").

<sup>22/</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541, ¶¶ 74-75, 80-82 (2007).

<sup>23/</sup> 47 U.S.C. § 251(c)(1); 47 C.F.R. § 51.301.

<sup>24/</sup> 47 C.F.R. § 51.301; *Local Competition Order* ¶ 141.

<sup>25/</sup> *Local Competition Order* ¶¶ 142, 150. A carrier violates its duty to negotiate in good faith by, for example, obstructing negotiations, delaying negotiations, refusing unreasonably to provide relevant information, requesting that a competing carrier "attest that the agreement complies with all provisions of the 1996 Act, federal regulations,

is ample evidence indicating that AT&T has not acted in good faith by taking “actions that are deliberately intended to delay competitive entry, in contravention of the statute’s goals,” which the FCC has determined it “will not condone.”<sup>26/</sup>

Intrado’s inclusion of issues for the first time in its Petition does not support dismissal or abeyance.<sup>27/</sup> As discussed above, such an approach is consistent with the framework established by the Act and AT&T has been given the opportunity to respond to Intrado’s issues in its response to the Petition. There is no merit to AT&T’s argument that the Act required Intrado to first seek mediation from the Commission prior to filing its Petition.<sup>28/</sup> Indeed, a closer reading of the *Atlantic Alliance* case cited by AT&T makes clear that Intrado could have sought mediation or arbitration under the provisions of the Act:

Under §252(a)2), plaintiff could have asked the state commission to participate in negotiations at any time after the initial request, thereby forcing defendant to the table. *Alternatively*, plaintiff might have sought arbitration after 135 days, pursuant to § 252(b).<sup>29/</sup>

Intrado’s choice to utilize arbitration rather than mediation simply does not support AT&T’s request for dismissal or abeyance.

Moreover, when Intrado provided AT&T with its proposed interconnection agreement on December 18, 2007, Intrado gave AT&T some proposed dates for the Parties to discuss Intrado’s proposed changes.<sup>30/</sup> As the Commission is well aware from prior arbitrations, it is fairly typical

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and state law,” and by failing to comply with reasonable requests for cost data. *See* 47 C.F.R. § 51.301; *Local Competition Order* ¶¶ 148, 149, 152, 155.

<sup>26/</sup> *Local Competition Order* ¶ 154.

<sup>27/</sup> AT&T Motion at 3.

<sup>28/</sup> AT&T Motion at 4.

<sup>29/</sup> *Atlantic Alliance Telecommunications, Inc. v. Bell Atlantic*, No. 99-CV-4915 (ARR), 2000 U.S. Dist. LEXIS 19649, \*13-14 (E.D.N.Y. Apr. 17, 2000) (emphasis added).

<sup>30/</sup> Email correspondence from Thomas Hicks, Intrado, to Karon Ferguson, AT&T (Dec. 18, 2007) (attached as Attachment 1).

that as the arbitration process plays out the parties continue to negotiate and resolve issues, which is what Intrado has tried to do and will continue to do. AT&T, however, never responded to Intrado's request for additional negotiations other than to acknowledge that it had received Intrado's correspondence.<sup>31/</sup> Thus, while AT&T argues that negotiation would have determined whether it was "willing to accommodate many of [Intrado's] requests,"<sup>32/</sup> AT&T rejected Intrado's requests to do just that.

Further, inclusion of issues for the first time or newly proposed language in a petition for arbitration is not unique to the instant arbitration. Carriers filing petitions for arbitration are required to identify all issues raised by the interconnection agreement to be arbitrated by the state commission, or lose their right to such arbitration.<sup>33/</sup> As a practical matter, some issues are not put on the table during the negotiation process because they are less critical to the proposed interconnection arrangement or the negotiating parties simply do not have enough time to address them before the arbitration deadline. Under AT&T's approach, competitors like Intrado would be at the mercy of the ILEC to determine which issues should be identified and negotiated before an arbitration petition is filed, which would be contrary to the purposes of the Act.

In addition, the FCC utilizes a similar arbitration method when it assumes the jurisdiction of a state commission pursuant to Section 252(e)(5) of the Act.<sup>34/</sup> Specifically, the FCC has embraced a "best final offer" process as the preferred method for arbitration of interconnection agreements.<sup>35/</sup> Under this style of arbitration, also known as "baseball arbitration," each party

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<sup>31/</sup> Email correspondence from Karon Ferguson, AT&T, to Thomas Hicks, Intrado (Dec. 20, 2007) (attached as Attachment 2).

<sup>32/</sup> AT&T Motion at 3.

<sup>33/</sup> 47 U.S.C. § 252(b)(1).

<sup>34/</sup> 47 U.S.C. § 252(e)(5). This section allows the FCC to step in the shoes of a state commission that has failed to act in response to a petition for arbitration.

<sup>35/</sup> 47 C.F.R. § 51.807(d).

presents the arbitrator its preferred language to be implemented in the interconnection agreement and the arbitrator makes its ruling based on each party's proposals, hearings, and briefs in support. The FCC has recognized that final offer arbitration fosters a situation where "each party has incentives to propose an arrangement that the arbitrator could determine to be fair and equitable."<sup>36/</sup> The FCC also has acknowledged that "parties are more likely to present terms and conditions that approximate the economically efficient outcome, because proposing extreme terms and conditions may result in an unfavorable finding by the arbitrator" under the final offer method.<sup>37/</sup> Accordingly, there is no justification for dismissing the Petition or holding the proceeding in abeyance because Intrado submitted its proposed interconnection agreement language with its Petition.

### **III. AT&T ONLY SEEKS TO FURTHER DELAY INTRADO'S ENTRY INTO THE MARKET BY CLAIMING ADDITIONAL NEGOTIATIONS ARE NECESSARY**

AT&T's claims that the Commission must dismiss Intrado's Petition or hold the proceeding in abeyance so that the Parties may negotiate are specious.<sup>38/</sup> First, AT&T ignored Intrado's suggestion for additional negotiations (including proposed dates) when Intrado transmitted its proposed revisions to the AT&T template interconnection agreement on December 18, 2007. Second, AT&T rejected Intrado's more recent attempt to continue the Parties' negotiations. AT&T does not appear to be interested in engaging in substantive negotiations with Intrado and therefore its request can only be viewed an attempt to further delay the implementation of its interconnection obligations.

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<sup>36/</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 14172, ¶ 268 (1996) ("Local Competition NPRM").

<sup>37/</sup> *Local Competition NPRM* ¶ 268. The FCC observed that open-ended arbitration is slower and more difficult to administer than final offer arbitration. See *Local Competition NPRM* ¶ 268.

<sup>38/</sup> See generally AT&T Motion.

In addition to Florida, Intrado also filed petitions for arbitration against AT&T ILECs in Ohio, North Carolina, and Alabama, and each of those AT&T ILECs filed a motion similar to the one filed by AT&T here. On January 17, 2008, Intrado and AT&T Ohio agreed to extend the statutory deadline for the Ohio commission to act by thirty days, and agreed to use those thirty days on the front end to engage in negotiations and mediation (with the procedural schedule for arbitration starting immediately after the thirty-day period). AT&T Ohio also agreed to withdraw its motion given that the motion would be “moot” in light of the Parties’ agreement to engage in additional negotiations and mediation prior to the initiation of the arbitration proceeding.

As Intrado indicated in its request for negotiation and as AT&T acknowledged,<sup>39/</sup> Intrado seeks to negotiate a multi-state interconnection agreement governing interconnection in each state of AT&T’s 22-state operating territory pursuant to the federal merger conditions established by the FCC.<sup>40/</sup> Thus, from a practical standpoint, there will only be one agreement between Intrado and the AT&T ILECs. Consistent with this approach, Intrado has been dealing with one AT&T negotiation team. Consequently, any negotiations that occur in the next thirty days as a result of the agreement reached in Ohio will affect the comprehensive interconnection agreement between Intrado and the AT&T ILECs as well as the issues to be arbitrated in all other states. For this reason, Intrado sought to reach a similar agreement with AT&T for Florida to extend the statutory time frame for Commission action by forty-five days (an additional fifteen days beyond what was agreed to in Ohio) to give the Parties forty-five days to negotiate and/or mediate with

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<sup>39/</sup> See Attachment 3 for correspondence between the Parties indicating that both Intrado and AT&T understood that the agreement would be applicable to every state in AT&T’s 22-state operating territory.

<sup>40/</sup> *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, Appendix F (2007) (“*AT&T/BellSouth Merger Order*”); see also Intrado Petition at 24-26.



the Commission's assistance thereby making AT&T's Motion moot. AT&T rejected Intrado's offer to enter into the same type of arrangement as that agreed to by its affiliate in Ohio.

While AT&T contends that it has no obligation to negotiate from the AT&T 13-State Agreement in Florida,<sup>41/</sup> this argument is inconsistent with AT&T's requirements under its federal merger conditions.<sup>42/</sup> By allowing the portability of interconnection agreements throughout the AT&T/BellSouth territory, AT&T's merger conditions contemplate that a single interconnection agreement could be used in each state of AT&T's 22-state operating territory (subject to technical feasibility and state-specific pricing and performance plans). Moreover, AT&T's argument is contrary to AT&T's statements and the findings of the FCC and the Commission that the merged entity would operate as a single, integrated entity.<sup>43/</sup>

Throughout the Parties' negotiations, AT&T has indicated that a comprehensive 22-state template agreement would be forthcoming, but never provided such a document to Intrado.<sup>44/</sup> Thus, consistent with AT&T's merger commitments, Intrado modified the 13-State Agreement to apply to AT&T's entire 22-state operating region. AT&T's claims that it needs additional time to synchronize the 9-State and 13-State Agreements<sup>45/</sup> is simply another delay tactic and a violation of AT&T's voluntary commitment to the FCC to ensure that interconnection agreements are portable throughout its 22-state territory. AT&T's effort to circumvent its federal obligations should not be condoned.

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<sup>41/</sup> AT&T Motion at 3.

<sup>42/</sup> *AT&T/BellSouth Merger Order*, Appendix F.

<sup>43/</sup> *AT&T/BellSouth Merger Order* ¶ 210 (noting operation of AT&T and BellSouth "as a single company"); Docket No. 060308-TP, *Joint Application for Approval of Indirect Transfer of Control of Telecommunications Facilities Resulting from Agreement and Plan of Merger between AT&T Inc. and BellSouth Corporation*, Notice of Proposed Agency Action Order Approving Indirect Transfer of Control (June 23, 2006) (finding that the vertical integration of the companies will result in "more efficient and reliable services" and will "increase efficiency and reduce costs by avoiding the need for inter-networking traffic between companies").

<sup>44/</sup> Intrado Petition at 13-17.

<sup>45/</sup> AT&T Motion at 3, n.7.

## CONCLUSION

For the foregoing reasons, Intrado respectfully requests that the Commission reject the Motion to Dismiss or, in the Alternative, to Hold in Abeyance filed by AT&T and move forward to arbitrate under federal and state law the unresolved issues identified in Intrado's Petition consistent with Intrado's proposed language set forth in Attachment 1 to the Petition.

Respectfully submitted,

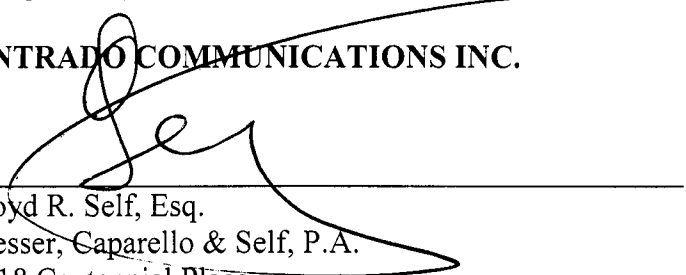
**INTRADO COMMUNICATIONS INC.**

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Its Attorneys

Dated: January 22, 2008

**LIST OF ATTACHMENTS**

<b>No.</b>	<b>BRIEF DESCRIPTION</b>
1.	<b><u>CONFIDENTIAL</u></b> - Email correspondence from Thomas Hicks, Intrado, to Karon Ferguson, AT&T (Dec. 18, 2007) (also Attachment 22 to Intrado Petition)
2.	<b><u>CONFIDENTIAL</u></b> - Email correspondence from Karon Ferguson, AT&T, to Thomas Hicks, Intrado (Dec. 20, 2007)
3.	<b><u>CONFIDENTIAL</u></b> - Intrado Negotiation Request (May 18, 2007) (also Attachment 6 to Intrado Petition)  <b><u>CONFIDENTIAL</u></b> - Letter from Karon Ferguson, AT&T, to Thomas Hicks, Intrado (Oct. 23, 2007) (also Attachment 3 to Intrado Petition)

ATTACHMENT 1  
IS CONFIDENTIAL

ATTACHMENT 2  
IS CONFIDENTIAL

ATTACHMENT 3

IS CONFIDENTIAL