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March 7, 2008

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 080089-TP:
Petition of Intrado Communications, Inc. for Declaratory
Statement Regarding Local Exchange Telecommunications
Network Emergency 911 Service**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Dismiss and Response to Intrado's Petition for Declaratory Statement, 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. 080089-TP

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

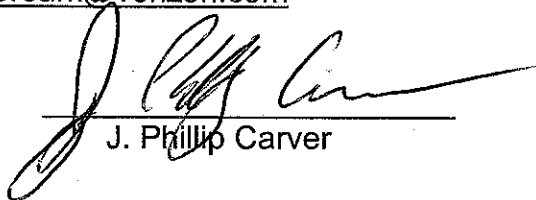
Electronic Mail and First Class U. S. Mail this 7th day of March, 2008 to the following:

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J. Phillip Carver

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 7, 2008

**AT&T FLORIDA'S MOTION TO DISMISS AND
RESPONSE TO INTRADO'S PETITION FOR DECLARATORY STATEMENT**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), hereby files its Motion to Dismiss and Response to the Petition for Declaratory Statement filed by Intrado Communications, Inc. ("Intrado"), and states as grounds in support thereof the following:

I. INTRODUCTION

1. Intrado seeks a declaration that, if it acquires a Public Safety Answering Point ("PSAP") as a customer, no ILEC can charge the PSAP or Intrado on a going forward basis for tariffed services. Intrado's Petition for Declaratory Statement should be summarily dismissed because it falls far short of the well-established requirements that a Petition for Declaratory Judgment (or Statement) must meet to be deemed sufficient. The various deficiencies in Intrado's Petition do not just render it inadequate to meet the requirements of Florida law. The Petition is so vague as to both the operative facts and the law for which Intrado seeks a declaration that it would be impossible for the Commission to properly issue a responsive declaratory statement. The vagueness of Intrado's Petition also makes it impossible for AT&T Florida, or any other interested party, to reply without engaging in a substantial amount of conjecture

as to the true facts in the instant situation. For these reasons, the Petition should be dismissed.

2. If, despite the deficiencies of the Petition, the Commission decides to rule on Intrado's request, then the relief Intrado requests should be denied. Intrado's Petition is based on the false premise that if Intrado provides service to a PSAP, then the PSAP would under no circumstances require further service from the ILEC. As described herein, ILEC services would be required by the PSAP in numerous situations, and the ILEC should be paid for the services it provides.

II. MOTION TO DISMISS

3. Florida Statutes Section 120.565 governs the issuance of a declaratory statement by an agency. In pertinent part, it provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

In addition, Florida law provides that "[a]n administrative agency may not use a declaratory statement as a vehicle for the adoption of a broad agency policy or to provide statutory or rule interpretations that apply to an entire class of persons."

Tampa Electric Company v. Florida Dept. of Community Affairs, 654 So.2d 998, 999 (Fla. 1st DCA 1995) citing *Regal Kitchens, Inc. v. Florida Dept. of Revenue*, 641 So.2d 158, 162 (Fla. 1st DCA 1994).

4. Intrado requests that the Commission issue a Declaratory

Statement:

- a. Establishing that the ILEC may not charge Intrado and/or the PSAP for any tariffed 911 local exchange telecommunications network services previously provided to the PSAP unless Intrado or the customer specifically orders such services.
- b. Establishing that the ILEC may not charge Intrado and/or the PSAP for any terminated 911 services through new tariffed or non-tariffed rates.
- c. Establishing that the ILEC may not bundle its services in such a manner as to require Intrado and/or PSAP to pay for any terminated 911 services or otherwise for any 911 services not actually requested or consumed.

(Petition, p. 11).

Rule 28-105.001, Florida Administrative Code, specifically states that a “declaratory statement is not the appropriate means for determining the conduct of another person.”

Intrado’s request, as set forth in Points a through c above, does not conform to Rule 28-105.001, Florida Administrative Code, in that it is asking the Commission to state that ILECs in Florida (not just AT&T Florida) are not entitled to take certain actions.

5. The Commission rejected a similar request for declaratory relief in the matter styled *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. 060049-TL, Order No. PSC-06-0306-DS-TL (Issued April 19, 2006). In that case, Broward County filed a request for a declaration that BellSouth was not “entitled,

by virtue of any provision of its Tariff, or by any statute, rule, or order of the Commission,” to require various payments, use Broward County Property for certain purposes or to abrogate the terms of a lease. (Id., p. 6). The Commission rejected this portion of Broward County’s Petition and stated the following:

Rule 28-105.001, Florida Administrative Code, specifically states that a ‘declaratory statement is not the appropriate means for determining the conduct of another person.’ Broward County’s request, as set forth in Points A through D above, does not conform to Rule 28-105.001, Florida Administrative Code, in that it is asking us to state that BellSouth is not entitled to take certain actions.

(Id.).

Since Intrado’s Petition is composed entirely of the same type of improper requests, it should be dismissed.

6. Moreover, under the standard that has prevailed for more than 50 years, a Petition seeking a Declaratory Judgment (or Statement) can only be deemed sufficient if contains allegations sufficient to establish, if proven, five separate elements. This well-settled standard was described in *City of Hollywood v. Power & Light*, 624 So 2d 285, 286-87 (4th DCA 1993) as follows:

The standard for testing the sufficiency of a declaratory judgment complaint is set out in *May v. Holley*, 59 So.2d 636 (Fla. 1952):

Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that [1] there is a bona fide, actual, present practical need for the declaration; [2] that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; [3] that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; [4] that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; [5] that the antagonistic and adverse interest are all before the court by proper process or class

representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

Id. at 639. See also *Robinson v. Town of Palm Beach Shores*, 388 So.2d 314 (Fla. 4th DCA 1980).¹

7. Likewise, in *Okaloosa Island Leaseholders Association, Inc. v. Okaloosa Island Authority*, 308 So.2d 120, 122 (Fla 1st DCA 1975), the Court commented on this standard by noting that a request for declaratory judgment is insufficient unless there is a “bona fide dispute between contending parties as to a present, justiciable issue.” The Court further confirmed that, “to withstand a motion to dismiss, a complaint for declaratory relief must allege facts showing that there is a bona fide, actual, present, and practical need for a declaration.” (*Id.*). Further, as indicated above, Florida Statutes Section 120.565 requires that the “petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances.”

8. Judged against these standards, Intrado’s Petition fails miserably. Although Intrado’s Petition contains almost 12 pages of rhetoric and argument, there is an astounding paucity of factual allegations. Moreover, the few facts that are alleged are so vague that it is virtually impossible to determine precisely what the situation is, and it is even more difficult to determine whether there is an actual issue for which resolution is needed, or merely the remote prospect of a future dispute.

9. The only portion of the Petition that describes any facts that would ostensibly cause Intrado to require a declaration as to its rights is paragraph 10. This

¹ See also, *Hollywood v. Petrosino*, 864 So.2d 1175 (Fla. 4th DCA 2004).

paragraph alleges that when Intrado previously negotiated with an unidentified PSAP, the PSAP ended negotiations because of an alleged uncertainty as to whether the PSAP would “continue to be charged, directly or indirectly through Intrado, the ILEC’s 911 tariff charges or new charges.” (Petition, Par. 10). Intrado adds that “it *has been suggested*” that an ILEC and/or the PSAP may seek unwarranted cost recovery by Intrado to rehome circuits.” (Id.) (emphasis added). Thus, Intrado has no direct knowledge to suggest that any charge will be levied in this particular case upon a PSAP, upon Intrado, or upon anyone else. Intrado’s entire Petition is premised upon a single isolated statement from an unidentified third party. Further, Intrado appears to have no knowledge (or at least it states none) as to the identity of the ILEC, the services in question, the amount of the charges, the circumstances under which these charges might be applied, or the specific tariff provisions that might apply. At the same time, although Intrado must know the identity of the PSAP referred to in its Petition, Intrado fails to disclose even this information.

10. There are only two possibilities: One, Intrado does not know the facts, and has filed the Petition based on nothing more than rumor and conjecture. Two, Intrado has made a strategic decision to withhold the operative facts, and to base its request on an extremely vague and cursory factual recitation because a more complete recitation would reveal that Intrado is not entitled to the declaration it seeks.² In either event, these factual allegations are insufficient.

² This second possibility is especially suggested by the fact that Intrado has not identified the PSAP that allegedly make the above described “suggestions,” and Intrado has made no attempt to make this PSAP a party to this proceeding.

11. Further, based on the Petition's sparse recitation of facts, Intrado requests that the Commission interpret three Statutes, one section of the Florida Administrative Code, and a total of seven tariffs that relate to services provided by four ILECs. The AT&T Florida Tariffs alone that Intrado requests the Commission to interpret have almost 50 pages of provisions, none of which are specifically identified by Intrado as being potentially applicable. Adding these to the tariffs of the other ILECs, Intrado has placed before the Commission for ostensible clarification, hundreds of pages of tariffs, and has done so without identifying any specific sections that it believes may (or may not) apply. Finally, Intrado has brought this astoundingly vague Petition in a way that would appear to reflect an intent to "sneak it by" the parties whose interests will be adversely affected. Specifically, Intrado did not serve AT&T Florida, nor does it appear to have served the unidentified PSAP, any PSAPs that Intrado claims to believe may charge it to rehome circuits or any of the other ILECs whose interests could be adversely affected.

12. Intrado's Petition fails to satisfy at least three of the five elements required for a sufficient request for a declaratory ruling. First, Intrado's vague recitation of facts "suggested" by an unidentified third party is insufficient to establish that there is a "bona fide, actual, present practical need for the declaration." Intrado's Petition also fails to satisfy this element because it does not identify with specificity the portions of the referenced tariffs that might apply. Intrado must do more than vaguely reference hundreds of pages of tariffs and request the Commission to rule that none of them apply.

13. Second, as set forth in *City of Hollywood, et al.*, the declaration must deal with a “present, ascertained or ascertainable state of facts.” The vague allegations of the Petition also fail to meet this requirement. Third, Florida law specifically requires that “the antagonistic and adverse interests are all before the . . . [tribunal] . . . by *proper process or class representation.*” (Id.) (emphasis added). Thus, Florida law concerning declaratory judgments does not allow the sort of “stealth petition” that Intrado has filed in an attempt to obtain a judgment adverse to the ILECs, while making an apparently calculated decision to do so without making the ILECs parties to the proceeding.

14. In AT&T Florida’s case, this deficiency in the Petition has been cured by the fact that AT&T Florida (despite Intrado’s efforts) was able to discover the existence of this proceeding, and to seek intervention. AT&T Florida does not know whether all the other potentially affected ILECs have been similarly able to detect Intrado’s subterfuge. At the same time, Intrado specifically claims in the Petition that “it has been suggested” that “the PSAP” might try to obtain from Intrado costs to rehome circuits. Thus, if the allegations of the Petition are true, Intrado is also seeking a declaration that would be adverse to the interest of one or more PSAPs. Given this, Intrado must also serve the affected PSAPs to allow them an opportunity to participate in this proceeding. Again, Intrado has failed to do so.

15. For all of these reasons, Intrado’s Request for Declaratory Statement is insufficient and should be dismissed. Moreover, this is not simply a question of Intrado’s technical failure to meet the applicable pleading requirements. Instead, the

real problem is that Intrado has provided the Commission with virtually no facts that could serve as the basis for a valid and legally sustainable declaration of Intrado's rights, or of the rights of all other interested parties.

III. RESPONSE

16. Again, Intrado's Petition contains virtually no alleged facts. Nevertheless, to the extent that Intrado's Petition does contain factual allegations that ostensibly entitle Intrado to the requested relief, these allegations are denied.

17. As noted above, the vagueness of Intrado's pleading renders impossible a determination by the Commission regarding the specific situation Intrado references. This calculated vagueness also makes a focused, specific response by any of the parties having an adverse interest in this proceeding impossible. In other words, Intrado has so insufficiently described the situation in question that AT&T Florida cannot comment as to whether any portion of its tariffs might apply in these particular circumstances. However, AT&T Florida can respond to one aspect of Intrado's argument: the fallacious contention that, if Intrado provides service to a PSAP, all ILEC charges to the PSAP are improper. Intrado's Petition purports to be based on the overriding principle that ILECs should not charge for services that they do not render. AT&T Florida agrees with this principle, and believes that it should apply equally to ILECs, to CLECs, to carriers such as Intrado, or to any other provider. However, Intrado's Petition also relies on the false premise that once a PSAP purchases services of some sort from Intrado, it then necessarily ceases to use ILEC services in every instance. This premise is demonstrably false under numerous circumstances.

18. Intrado asserts that it has the ability to provide all of the services required for an E911 call. Intrado similarly misrepresents to the Commission that the services Intrado seeks to provide to its customer, the PSAP, (e.g., call routing and termination and possibly CPE) are all that is needed to provide 911 service. On this point, Intrado is flatly wrong. A 911 call obviously can not exist without an end user who originates the call. This end user is the customer of the ILEC. Given this, 911 service will not function without the ILEC delivering the ANI digits to the PSAP for the database correlation between the telephone number and the location of the end user. Intrado acknowledges this fact when it states in its Petition that *"The ability to identify the calling party telephone number and location is made possible through various technologies and functionalities including automatic number identification ("ANI") information and automatic location identification ("ALI") information."* (Petition, Par. 4) (emphasis added). Without these functions, there would be no ability to perform the necessary location and identification of the end user, which is required to dispatch a first responder. Again, Intrado cannot provide this function. More to the point, there are absolutely no facts alleged in the Petition from which the Commission could conclude that Intrado has the capability to identify and locate end users without the use of ILEC-provided ANI. When an ILEC performs the ANI functionalities to deliver the ANI to the PSAP, the ILEC is entitled to charge for this service.

19. Also, if a PSAP selects Intrado's 911 service, there will be times when it is necessary for the ILEC to perform a Selective Router (SR) function. Where an ILEC central office overlaps multiple PSAP jurisdictional boundaries, it is necessary to direct

the call to the correct PSAP, based on the street address of the end user. Likewise, if some of the PSAPs are served by Intrado and other PSAPs are served by the ILEC, it will be necessary to direct the call either to the PSAP (if served by the ILEC) or to Intrado (if the PSAP is served by Intrado). Normally, this would be done on a primary/secondary basis and both the ILEC and Intrado would need to work cooperatively to determine which SR would be primary or secondary. The point is that if the ILEC is performing the SR functionalities required to steer 911 calls to the correct PSAP, then an SR charge should apply.

20. Given the fact that ANI, ALI and SR are necessary to the provision of 911 service, there are at least four scenarios in which a PSAP could choose to purchase services from Intrado, but would also require services from AT&T Florida. In each of these scenarios, AT&T Florida should be paid for the services it provides. Specifically:

21. First Scenario: AT&T Florida has subscribers in Intrado's 911 jurisdiction, but AT&T Florida's wire center is "pure," i.e., it only serves customers in the Intrado-served 911 jurisdiction. In this case, AT&T Florida would install ES trunks (end office-to-tandem trunks) to Intrado's selective router, and charge the PSAP the tariffed "per 1000 access lines" monthly rate for ANI. In this scenario, the PSAP purchasing services from Intrado would only be charged by AT&T Florida for ANI.³

22. Second Scenario: AT&T Florida has subscribers in Intrado's 911 jurisdiction, and its wire center(s) overlap into another 911 jurisdiction(s). In this case, if AT&T Florida is the 911 System Service Provider for the majority of the access lines in

the wire center, then AT&T Florida would leave in place its ES trunks to its selective router. AT&T Florida would continue to perform the "sorting" of traffic in its selective router using its Selective Routing Database table, and would typically provision Tandem-to-Tandem trunking between the AT&T Florida selective router and Intrado's selective router.

23. If a call goes to a PSAP served by AT&T Florida, then it will arrive at AT&T Florida's tandem on its ES trunks, AT&T Florida's tandem will perform selective routing, and the call will be sent to the PSAP on AT&T Florida's tandem-to-PSAP trunks. If a call is destined for Intrado's PSAP, the call will arrive at AT&T Florida's tandem on its ES trunks, AT&T Florida's tandem will perform selective routing, and the call will be sent across the tandem-to-tandem trunk group to Intrado's selective router. Intrado can then send the call to its PSAP. In this scenario, AT&T Florida would charge the PSAP served by Intrado the tariffed "per 1000 access lines" monthly rate for ANI and SR. There would be no charge for ALI.

24. Third Scenario: Assume the same scenario as above, except that the majority of the access lines in the wire center need to be routed to an Intrado-served PSAP. In this case, AT&T Florida would typically install ES trunks from its end office(s) to Intrado's router. If a call is destined for a PSAP served by AT&T Florida, the call would arrive at Intrado's router on AT&T Florida's ES trunks. Intrado would perform selective routing, and would send the call to AT&T Florida's selective router via tandem-to-tandem trunking. AT&T Florida would then send the call to the PSAP on its tandem-

³ If the PSAP were solely a customer of AT&T Florida (i.e., if it took no services from Intrado), it

to-PSAP trunks. If a call is destined for Intrado's PSAP, then the call would arrive at Intrado's router on AT&T Florida's ES trunks, Intrado would perform selective routing, and Intrado would deliver the call to its PSAP. In this case, AT&T Florida would charge the Intrado customer/PSAP for ANI.

25. Fourth Scenario: There might also be a scenario in which another carrier, such as an ICO or a CLEC is trunked to AT&T Florida's selective router, and most of its subscribers need to go to a PSAP that is a customer of AT&T Florida. In this case, the carrier would leave in place its ES trunks to AT&T Florida's tandem. If one of the ICO or CLEC subscribers dials 911 and needs to be routed to an AT&T Florida-served PSAP, the call would come to AT&T Florida's selective router on the ICO or CLEC ES trunks. AT&T Florida would perform the selective routing, and AT&T Florida would send the call to the PSAP on our tandem-to-PSAP trunks.

26. If the call needs to go to a PSAP served by Intrado, the call would come in on the same CLEC or ICO ES trunks, AT&T Florida would perform the selective routing, and the call would typically be sent across a tandem-to-tandem trunk group to Intrado's selective router. At that point, Intrado would send the call to the PSAP. In this scenario, AT&T Florida is performing the selective routing for the ICO or CLEC, so AT&T Florida would charge the Intrado PSAP the tariffed "per 1000 access lines" monthly rate for SR only.

27. In each of these scenarios, AT&T Florida would provide services, even though the PSAP had elected to receive service from Intrado as well. Obviously, in

would be provided by AT&T Florida and charged for ANI, ALI and SR.

each of these cases it would be appropriate for AT&T Florida to be paid for the services it renders.

IV. CONCLUSION

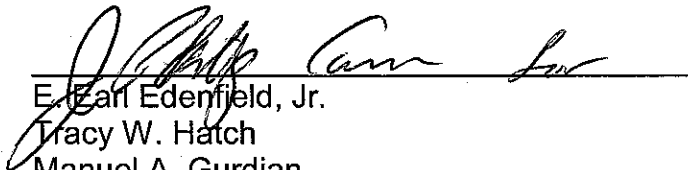
28. Intrado has filed a request for declaratory relief that is long on rhetoric and argument, but astoundingly short on facts. Given the dearth of facts alleged by Intrado--combined with the fact that all appear to be second hand, from anonymous sources, and based at least in part on conjecture and speculation---Intrado's Motion is grossly inadequate to meet the standards required for a sufficient Petition for Declaratory Relief. Intrado has clearly failed to provide sufficient facts to allow the Commission to understand the situation in question, to identify the specific legal provisions that apply, or to determine that there is an actual controversy that affects Intrado's substantial rights. Moreover, Intrado has also failed to comply with the requirement of Florida law to join and serve all parties whose adverse interests would be affected by the Declaration it seeks. Finally, Intrado's Petition fails to conform to Rule 28-105.001, which states that a "declaratory statement is not the appropriate means for determining the conduct of another person." For all these reasons, Intrado's Petition is insufficient and should be dismissed.

29. Even if the Commission were to allow Intrado to go forward on its deficient Petition for Declaratory Statement, Intrado's request for a declaration that ILECs can never charge their tariffed rates when Intrado serves a PSAP must be denied. Intrado mischaracterizes the relief that it seeks as an affirmation of the facially uncontroversial

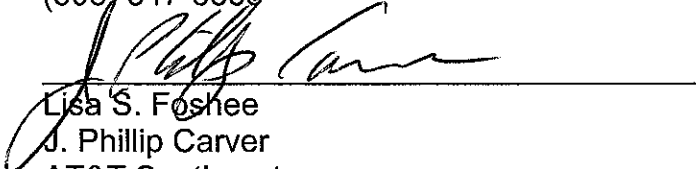
proposition that ILECs should not be allowed to charge for services that they do not provide. This statement, however, is simply a smokescreen for the fundamental misrepresentation by Intrado that, when it provides service to a PSAP, that PSAP would never also obtain services from an ILEC. To the contrary, there are numerous scenarios in which the PSAP would continue to purchase ILEC services, including ANI and/or Selective Routing. The ILEC should be paid for the services it renders in these instances.

Respectfully submitted this 7th day of March, 2008.

AT&T FLORIDA



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