

Ruth Nettles

From: Smith, Debbie N. [ds3504@att.com]
Sent: Tuesday, March 25, 2008 12:55 PM
To: Filings@psc.state.fl.us
Cc: Carver, J; Tracy Hatch; Gurdian, Manuel; Follensbee, Greg; Holland, Robyn P; Woods, Vickie
Subject: Florida Docket No. 080089-TP
Importance: High
Attachments: motion.pdf

- A. Debbie N. Smith
Assistant to J. Phillip Carver
AT&T Southeast
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(404) 335-0772
debbie.n.smith@att.com

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

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

- D. 26 pages total (includes letter, certificate of service and pleading (including Attachment 1))

- E. AT&T Florida's Motion to Dismiss and Response to Intrado's Amended Petition for Declaratory Statement.

<<motion.pdf>>

Debbie N. Smith (sent on behalf of J. Phillip Carver)
Assistant to J. Phillip Carver & John T. Tyler
AT&T Southeast
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, Georgia 30375
(404) 335-0772
Please note my new email address is debbie.n.smith@att.com

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. GA621

DOCUMENT NUMBER-DATE

02202 MAR 25 8

3/25/2008

FPSC-COMMISSION CLERK



J. Phillip Carver
Senior Attorney
Legal Department

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: 404.335.0710
F: 404.614.4054
j.carver@att.com

March 25, 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 Amended 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

DOCUMENT NUMBER-DATE

02202 MAR 25 8

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 080089-TP

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

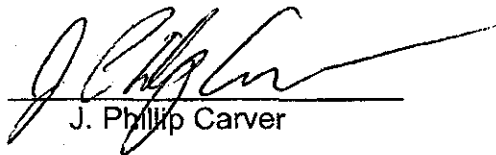
Electronic Mail and First Class U. S. Mail this 25th day of March, 2008 to the following:

Adam Teitzman
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
ateitzma@psc.state.fl.us

Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Tel. No. (850) 425-5213
Fax. No. (850) 224-4359
fself@lawfla.com

Rebecca Ballesteros
Associate Counsel
Intrado Communications, Inc.
1601 Dry Creek Drive
Longmont, CO 80503
Tel. No. (720) 494-5800
Fax. No. (720) 494-6600
Rebecca.Ballesteros@intrado.com

Dulaney L. O'Roark III
Verizon Florida LLC
P.O. Box 110, MC FLTC0007
Tampa, FL 33601-0110
Tel. No. (678) 259-1449
Fax. No. (678) 259-1589
de.oroark@verizon.com



J. Phillip Carver

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Intrado) Docket No. 080089-TP
Communications, Inc. for Declaratory)
Statement Regarding Local Exchange)
Telecommunications Network)
Emergency 911 Service)
_____) Filed: March 25, 2008

**AT&T FLORIDA'S MOTION TO DISMISS AND RESPONSE TO
INTRADO'S AMENDED 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 Amended Petition for Declaratory Statement filed by Intrado Communications, Inc. ("Intrado"), and states as grounds in support thereof the following:

1. AT&T Florida has no objection to the filing by Intrado of an Amended Petition. The Amended Petition that Intrado seeks to file, however, suffers from the same infirmities as Intrado's original Petition. Accordingly, this Petition should be dismissed and/or denied for all of the reasons set forth in AT&T's Motion to Dismiss and Response to Intrado's Petition, filed March 7, 2008. A copy of that Motion and Response is attached hereto as Attachment 1, and is hereby incorporated by reference.

As an Additional Response AT&T Florida states the following:

2. Intrado's filing of an amended Petition merely highlights the reasons that Intrado's request for Declaratory Statement should be denied. Intrado first filed a Petition that was *astoundingly deficient*. The original Petition suffered from (1) factual allegations as to Intrado's circumstances that were so vague that it would be impossible for the Commission to make a legally valid determination of Intrado's rights; and (2) an extremely overbroad, non-specific reference to hundreds of tariff pages, which Intrado

DOCUMENT NUMBER-DATE

02202 MAR 25 08

FPSC-COMMISSION CLERK

requested the Commission to apply to the (largely undisclosed) facts to determine Intrado's rights and obligations. The first deficiency of the Petition constitutes a failure to comply with Section 120.565, F.S. (1) and (2), which requires that a Petition seeking declaratory relief set forth the petitioner's circumstances *with particularity*. The second deficiency constitutes a failure to comply with the requirement of Section 120.565 that the petitioner shall specify the particular statutory provision, rule or order (or, in this case tariff provision) about which a declaration is sought. Either deficiency, standing alone, would be enough to require that Intrado's request be denied.

3. Nevertheless, Intrado filed an Amended Petition that included no additional factual allegations. Instead, the Amended Petition contains a slight change in form that does not change the substance of Intrado's filing in the least. That is, Intrado's first Petition requested a determination as to what an ILEC may charge pursuant to tariff provisions, which are not specifically identified. The Amended petition requests a determination of what Intrado and PSAPs must pay pursuant to these same tariffs.

4. At this juncture, it is becoming increasingly clear that the deficiencies in Intrado's Amended Petition reflect a calculated decision to request affirmative relief while withholding information that would allow the Commission to determine whether the request should be granted. It also appears increasingly likely that Intrado has made this strategic decision because it knows full well that if it revealed the pertinent facts, then they would prompt the conclusion that Intrado is not entitled to the relief it seeks.

The Commission should not condone this sort of procedural game playing. Instead, Intrado's Amended Petition should be denied.

5. As AT&T Florida noted in its previous Motion and Response, this Commission has previously rejected a request for declaratory statement much like Intrado's current request in the case 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 Granting In Part and Denying In Part Petition for Declaratory Statement, Order No. PSC-06-0306-DS-TL ("Order") (Issued April 19, 2006) ("*Broward County*").

6. In response to AT&T Florida's citation to this case, Intrado mischaracterized the Order. Specifically, Intrado claimed in a previous filing that the Commission did not "reject" a part of Broward County's Petition, but instead "restated the question to allow for a seasoned analysis of the issue."¹ The weakness of Intrado's position is evident in the fact that Intrado argues that an Order entitled Order Granting in Part and Denying in Part Petition for Declaratory Relief did not "reject" any aspect of the Petition. A review of the Order confirms that Intrado's characterization is flatly wrong.

¹ Intrado's Response to AT&T Florida's Motion to Dismiss Intrado's Petition for Declaratory Statement, p 10.

7. In *Broward County*, the Petitioner filed a request for a declaration that BellSouth was not entitled “by virtue of any provision of its tariff or by statute, rule or order of the Commission” to require various payments or to Broward County property for certain purposes. (Id., p. 6). The Petitioner also went beyond this vague request to also request other declarations of its rights under specifically identified sections of the subject Tariff. The Commission rejected the portions of the request for declaratory statement that were impermissibly vague and considered only the portions of the Petition that identified with specificity the tariff provisions at issue. Thus, the Commission ruled, in pertinent part, as follows:

We hereby grant Broward County’s Petition for Declaratory Statement to the extent that it raises issues appropriate for a declaratory statement. We declare that, based on the facts set forth in Broward County’s petition, Broward County is not required under Section A2.3.9. of BellSouth’s tariff to provide rent-free space for the Maxihut and Broward County is not obligated under Section A5.2.2.F.1.e. of BellSouth’s tariff to pay the costs for the relocation of the Maxihut. *Broward County’s Petition for Declaratory Statement is denied to the extent that it improperly requests us to direct BellSouth to take certain actions, that it requests an interpretation of statutory provisions, rules, and orders not specifically referenced in the petition, and/or that it requests an interpretation of the Lease Agreement.*

(Id., p. 8) (emphasis added).

Thus, the Commission clearly denied the portions of the Petition that entailed only a vague request for relief that did not specify particular tariff provisions.

8. In the instant case, if the Commission were to deny Intrado’s request for relief to the extent it arises from vaguely stated allegations, then there would be nothing left to consider. Whereas the Petitioner in *Broward County* filed a Petition that was

vague in some regards and specific in others, Intrado has chosen to file a Petition that is uniformly insufficient, both in its statement of the factual circumstances and of the pertinent authority. Intrado's citation to seven sections of the tariffs of four ILECs² falls short of the sort of "specific reference" required by this Commission in *Broward County*. Thus, following the logic of that case, Intrado's Petition should be denied in its entirety.

9. Perhaps the most surprising aspect of Intrado's Amended Petition is that it reflects a decision by Intrado to add nothing to its description of the circumstances that allegedly prompt the need for a declaration. Like the original petition, Intrado's Amended Petition is composed of 11 pages of argument, conclusions, and rhetoric, but virtually no specific factual allegations. In the Amended Petition (as in the original Petition), the only portion that actually contains an attempt to allege any factual circumstances is paragraph 10. In this paragraph, Intrado alleges that an unidentified PSAP represented to Intrado that it feared that an unidentified ILEC might continue to charge the PSAP in some manner, even if the PSAP chose to obtain service from Intrado. Just as the identities of the PSAP and the ILEC are undisclosed, Intrado also fails to identify the particular charge that ostensibly would have been applied, the service to which the charge related, and the specific tariff provisions in question. Intrado does not even reveal whether the unidentified PSAP's fears were based on an actual statement by the unidentified ILEC, or whether Intrado has filed its Petition on

² As previously noted, the AT&T Florida tariffs alone to which Intrado has cited contain more than 50 pages, yet Intrado has provided no specific indication of the specific sections that it believes might apply.

the basis on nothing more than self-generated anxiety by a third party PSAP that Intrado has declined to identify.

10. Intrado has supplied the Commission with absolutely nothing upon which it could make a legally sustainable declaration of the rights of Intrado, the unidentified PSAP, or the various ILECs whose rights would be adversely affected by the declaration Intrado seeks. Moreover, this is not a case in which the Commission could undertake (as Intrado wrongly claims that the Commission did in *Broward County*) to repair Intrado's deficient pleading. Intrado has given the Commission so little to work with that it would be impossible for the Commission to utilize Intrado's allegations as the basis for a legally sustainable declaration.

11. Moreover, given the fact that Intrado has now filed the same vague factual statement twice, its decision to do so begins to look like a purely strategic decision. If, in fact, Intrado knows nothing more than it has stated in its two Petitions, then it is wasting the Commission's time by requesting a declaration based on third-hand rumor and innuendo, about which it has absolutely no direct knowledge. This prospect seems unlikely, however, because, at the very least, Intrado must know the identity of the PSAP that allegedly voiced its concerns about the present circumstances. Further, if as Intrado claims, it was negotiating to provide service to the PSAP, Intrado must know what it proposed to provide to the PSAP and what it is incapable of providing (e.g. the identity and location of end users that Intrado does not serve). Also, it is difficult to believe that Intrado does not know the identity of the ILEC currently serving the unidentified PSAP. Finally, it is also likely that Intrado knows with specificity which

tariffed services are involved. However, rather than a single, characteristically vague reference to ANI (Amended Petition, ¶ 17), Intrado reveals absolutely nothing as to any of these aspects of the current situation.

12. The only logical explanation is that Intrado has chosen to be vague because greater specificity would reveal that Intrado is not entitled to the relief it requests. In AT&T Florida's Response (incorporated herein), AT&T Florida describes four different scenarios in which a PSAP that has chosen to take service from Intrado would also continue to use ILEC services, and should also continue to pay for these services. If Intrado has any specific facts at its disposal that support its request, then one would assume Intrado would use the Amended Petition to state them, and to identify a specific factual situation in which ILECs would provide no tariffed services, and should not be entitled to charge the PSAP. Instead, Intrado chooses simply to repeat the same, astoundingly vague factual allegations that are contained in the Petition.

13. In an earlier filing, Intrado made the bizarre claim that if the Commission finds Intrado's factual allegations to be insufficient, then it must hold a hearing to elicit additional facts (Intrado's Response to AT&T Florida's Motion to Dismiss, p. 9).³ Thus, Intrado refuses to accept any responsibility as the Petitioner for adequately explaining the specific circumstances of the matter. Instead, Intrado takes the position that, even though it is the party seeking affirmative relief, it can make the decision to provide the

³ The case Intrado cites for this proposition (*Adventist Health System/Sunbelt Inc v Agency For Health Care* 955 So 2d 1173 (Fla 1st DCA 2007)) has no similarity to the instant case. In *Adventist*, the Petition was denied based on the finding that the Petitioner lacked standing. Nothing in that case supports

Commission with the vaguest of factual allegations, and the Commission is powerless to do anything other than hold a hearing to seek additional facts. Presumably, at this hearing, the Commission would have to force Intrado to reveal the unidentified PSAP, the nature of its negotiations with the PSAP, and the services that would be offered, all to determine whether Intrado is entitled to declaratory relief. AT&T Florida submits that there is better course of action: The Commission should deny Intrado's Petition, just as it did the improperly plead portions of the Petition in *Broward County*.

14. Finally, Intrado's cursory attempt to Amend its Petition fails to achieve even its limited, intended purpose. Pursuant to Rule 28-105.001, "[a] petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances." (emphasis added). Rule 28-105.001 further states that "[a] declaratory statement is not the appropriate means for determining the conduct of another person" (emphasis added).

15. In its reformulated request for declaratory statement, Intrado continues to make an improper request in that it asks the Commission to find that PSAPs (third parties not involved in the case that have not filed a petition for declaratory relief) do not have to make payment for tariffed ILEC 911 services, that the PSAP is not required to pay for terminated ILEC 911 services, and that the PSAP is not required to pay for any bundled ILEC services in such a manner as to require the PSAP to pay for any

Intrado's claim that this Commission cannot dismiss or deny an insufficient petition seeking declaratory relief.

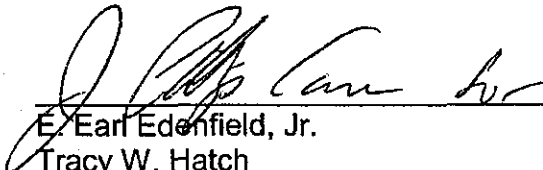
terminated 911 services. Thus, Intrado's request regarding PSAPs, as set forth in its Amended Petition, does not conform to Rule 28-105.001, Florida Administrative Code, in that it asks the Commission to state that PSAPs in Florida are not required to take certain actions, i.e. pay ILECs for certain tariffed services. Intrado's request is improper for this additional reason and should be denied.

CONCLUSION

For the reasons set forth above (as well as those incorporated by reference from AT&T Florida's earlier Motion and Response), Intrado's Request for Declaratory Statement should be denied.

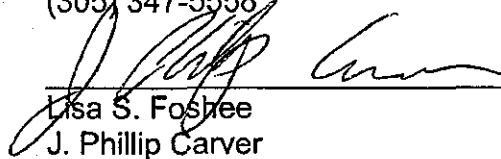
Respectfully submitted this 25th day of March, 2008.

AT&T FLORIDA



E. Earl Edenfield, Jr.
Tracy W. Hatch

Manuel A. Gurdian
c/o Gregory R. Follensbee
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5558



Lisa S. Fostree
J. Phillip Carver

AT&T Southeast
675 West Peachtree Street, Suite 4300
Atlanta, Georgia
(404) 335-0710

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

Attachment 1

DOCUMENT NUMBER-DATE

02202 MAR 25 8

FPSC-COMMISSION CLERK

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


E. Earl Edenfield, Jr.

Tracy W. Hatch

Manuel A. Gurdian

c/o Gregory R. Follensbee

150 South Monroe Street

Suite 400

Tallahassee, Florida 32301

(305) 347-5558


Lisa S. Foshee

J. Phillip Carver

AT&T Southeast

675 West Peachtree Street, Suite 4300

Atlanta, Georgia

(404) 335-0710

705923v2