

**Ruth Nettles**

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**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Tuesday, April 01, 2008 4:14 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 080089-TP  
**Attachments:** 2008-04-01, 080089, Intrado's Response to AT&T's Motion to Dismiss and Response to Amended Petition.pdf

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The Docket No. is 080089-TP - Petition of Intrado Communications Inc. for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Services.

This is being filed on behalf of Intrado Communications Inc.

Total Number of Pages is 11.

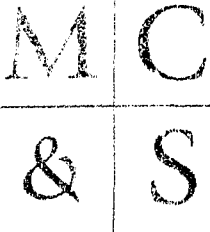
Intrado Communications Inc.'s Response to AT&T's Motion to Dismiss and Response to Intrado's Amended Petition for Declaratory Statement

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DOCUMENT NUMBER-DATE

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April 1, 2008

**BY ELECTRONIC FILING**

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

Re: Docket No. 080089-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Intrado Communications Inc. is an electronic version of Intrado Communications Inc.'s Response to AT&T Florida's Motion to Dismiss and Response to Intrado's Amended Petition for Declaratory Statement in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb  
Enclosure  
cc: Rebecca Ballesteros, Esq.

DOCUMENT NUMBER-DATE

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FPSC=COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Intrado Communications Inc. )  
for Declaratory Statement Regarding Local ) Docket No. 080089-TP  
Exchange Telecommunications Network ) Filed: April 1, 2008  
Emergency 911 Service )  
\_\_\_\_\_ )

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

Intrado Communications Inc. ("Intrado"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Response to AT&T Florida's ("AT&T") Motion to Dismiss and Response to Intrado's Amended Petition for Declaratory Statement and states:

1. On February 8, 2008, Intrado filed its Petition for Declaratory Statement requesting that the Commission offer guidance to Intrado as to whether Intrado, as a competitive local exchange carrier ("CLEC"), or its customers are required by statute, rule, or order of the Commission to pay ILEC tariff charges beyond those negotiated in an interconnection agreement for local exchange telecommunications E-911 services once the ILEC is no longer the E-911 service provider. Intrado alleged that such ILEC charges and the corresponding doubling of costs for certain services would affect Intrado's substantial interests by stifling competition for E-911 service. For the reasons set forth in the Petition, Intrado alleged that it has legitimate questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Commission has authority, and determined a need for a declaratory statement to resolve questions or doubts as to how the statutes, rules, orders, and tariffs discussed therein may apply to Intrado's particular circumstances.

2. On March 7, 2008, AT&T filed a lengthy Motion to Dismiss and Response to Intrado's Petition for Declaratory Statement ("AT&T Motion").

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3. On March 14, 2008, Intrado filed its Response to the AT&T Motion and a separate Amended Petition for Declaratory Statement (“Amended Petition”). The only item changed in the Amended Petition was the phrasing of the relief requested to make it clear that the issue for clarification by the Commission was whether Intrado or its customers would have to pay the tariff charges, rather than whether the ILEC could assess such charges. The 22 paragraphs of factual allegations were entirely unchanged. The only amendment was to paragraphs 23 and 24, which merely rephrased the relief requested, without substantively changing either its intent or effect.

4. On March 25, 2008, AT&T filed its Motion to Dismiss and Response to Intrado’s Amended Petition for Declaratory Statement (“Amended Motion”). As to the motion to dismiss portion of the Amended Motion, AT&T merely incorporates its earlier Motion to Dismiss. (Amended Motion at p.1, ¶1) Therefore, for the reasons set forth in Intrado’s March 14, 2008 Response to the AT&T Motion, AT&T’s Amended Motion should be dismissed as it is based on an incorrect standard applicable to declaratory judgments, and not declaratory statements.

5. In addition to reasserting its request for dismissal, AT&T’s Amended Motion included “an Additional Response.” The Additional Response recognizes that the:

Amended Petition . . . 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.

(Amended Motion at p.2, ¶3). Despite AT&T’s admission that the Amended Petition contains no substantive changes, and in an apparent effort to patch up the gross deficiencies in its initial

“Response,”<sup>1</sup> AT&T has now filed an “Additional Response.” This response is nothing more than AT&T wanting a second bite of the apple. It serves no purpose but to allow AT&T to continue to argue the same arguments that it already made, hoping perhaps to gloss over the fundamental deficiencies in its initial response, or hoping that by repeating them enough times the Commission will be lulled into paying them more attention than they deserve. To the extent AT&T’s Amended Motion is not rejected by the Commission as being procedurally unauthorized, Intrado relies upon its March 14, 2008 Response to AT&T’s original Motion for a recitation of the actual legal standards applicable to a Declaratory Statement under Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code, and its argument substantiating the basis for denying AT&T’s Amended Motion.

6. Finally, in keeping with AT&T’s efforts to attack Intrado’s motives rather than face up to the issues,<sup>2</sup> AT&T now asserts that Intrado’s Petition was filed “as a purely strategic decision,” and infers that Intrado is hiding the identity of the PSAPs to which ILEC threats of anticompetitive tariff charges were made, or the ILECs involved (AT&T Motion at p.6, ¶11). As set forth in its March 14, 2008 Response, Intrado asserts that it included all of the facts

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<sup>1</sup> As set forth in Intrado’s Response to AT&T’s Motion to Dismiss the Petition, Rule 28-105.0027, Florida Administrative Code, does not authorize the filing of a “responsive pleading.” Rather, the Rule only allows a substantially affected person to file a petition to intervene in a form that meets the requirements of subsection 28-106.201(2), F.A.C. The intervention rules do not authorize the filing of either a Motion to Dismiss or an Answer and Affirmative Defenses. Thus, Intrado asserts that AT&T’s initial “Response” is unauthorized under the Uniform Rules of Procedure. However, even if such a response is allowed, AT&T’s “Second Bite Response” has no basis in fact or law, and should be rejected by the Commission.

<sup>2</sup> See AT&T’s original Motion to Dismiss, in which it accused Intrado, in filing its petition under Section 120.565, of attempting to “sneak it by” other persons (AT&T Motion at p.7, ¶11), of filing a “stealth petition” (AT&T Motion at p.8, ¶13), or of engaging in “subterfuge” (AT&T Motion at p.8, ¶14). AT&T’s vitriol was leveled at Intrado despite the fact that a cursory review of the procedural standards applicable to declaratory statements would have shown AT&T that the petition seeking a declaratory statement is to be filed with the clerk of the agency, and that the agency then publishes a notice of the petition to place all interested persons on notice, a procedure that was followed by Intrado and the Commission in this case. However, as it did then and is doing now, AT&T prefers to levy baseless assertions imputing bad motives rather than address head-on its efforts to stifle competition in the provision of E-911 service by having Intrado and/or the PSAPs pay unauthorized and unwarranted charges.

necessary for the Commission to answer the *legal question* as to whether Intrado or its customers must continue to pay ILEC tariff charges when Intrado is the 911 network service provider. In addition, if the Commission determines that further facts are necessary in order for it to enter a declaratory statement, it has the authority to request additional facts from the Petitioner, or to conduct a hearing to get more facts. *Adventist Health System/Sunbelt, Inc. v. Agency For Health Care Administration*, 955 So.2d 1173, 1175-1176 (Fla. 1st DCA 2007). However, in order to rebut AT&T's accusation that Intrado is just "making it up" Intrado has attached letters from the Martin County and Charlotte County E-911 administrators confirming Intrado's allegations. Intrado does not submit these letters as substantive evidence, but they do further support the fact that there is a genuine question as to the legal obligations of Intrado and the PSAPs once ILEC service has been terminated. Indeed, the fact that these counties have been awarded grants by the State 911 Board so that they can purchase Intrado's next generation network services and terminate the ILEC tariff services presently utilized only further demonstrates the present necessity for an answer to the legal questions presented by Intrado. Thus, Intrado's concerns are neither speculative or imaginary.<sup>3</sup>

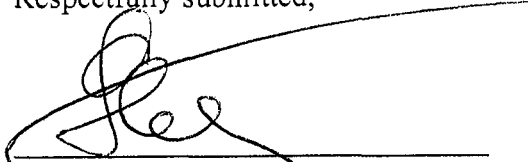
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<sup>3</sup> As set forth in Exhibits "A" and "B," neither the Petition nor the Amended Petition seek a declaratory statement as to contractual obligations for which early termination or liquidated damage clauses might apply, or services that have been specifically requested from an ILEC with an agreement to pay. Rather, the Petition addresses tariffed charges or rate elements that may be required of a CLEC and its current and potential customers outside of any arbitration or interconnection agreement. The ILECs, who currently control the vast majority of E-911 service have a vested, economic interest in keeping competition out. The payment of charges outside of the interconnection agreement would result in double charges for certain E-911 services by the CLEC or its customers and the restriction of competition.

It is notable that AT&T devotes so much attention to having Intrado's petition dismissed on procedural grounds, but not once does AT&T state that Intrado has no obligation to pay charges outside the interconnection agreement or those specifically requested by Intrado or the PSAPs. The fact that AT&T has failed to state that this Declaratory Statement is unnecessary demonstrates that this Declaratory Statement is in fact very necessary to declare that Intrado and the PSAPs are not required to pay such non-requested or non-agreed to charges.

7. For the reasons set forth herein, Intrado requests that the Commission deny AT&T's procedurally unauthorized and legally baseless "second bite" Amended Motion, and proceed with the development and entry of a declaratory statement on the issues identified by Intrado.

Respectfully submitted,



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and

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Counsel for Intrado Communications, Inc.

Robert L. Crowder  
Sheriff



Office of the Sheriff  
Martin County, Florida

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March 25, 2008

Ms. Ann Cole, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 080089, Intrado Petition for Declaratory Statement

Dear Ms. Cole:

On February 8, 2008, Intrado Communications Inc. ("Intrado") filed its petition for declaratory statement requesting that the Florida Public Service Commission ("Commission") address whether Intrado or a 911 Public Safety Answering Point ("PSAP") would bear any obligation to an incumbent local exchange telecommunications carrier ("ILEC") to pay an ILEC's 911 tariff charges when the PSAP has selected Intrado to provide the PSAP with its 911 services. On March 14, 2008, Intrado filed its amended petition substantively raising the same issue as the February 8<sup>th</sup> petition, but rephrasing the specific questions this Commission should address. As the E-911 Manager and the E-911 Coordinator for Martin County Primary Public Safety Answering Point.(PSAP), I strongly urge the Commission to consider the issues raised by Intrado and find that an ILEC may not charge Intrado and/or the PSAP for any ILEC 911 tariff charges, untariffed charges, or bundled charges for terminated 911 services.

Since the first deployment of emergency 911 services in the 1960s, the technology to receive and respond to 911-dialed calls has evolved from a wireline ILEC telephone network perspective. Today, traditional landline telephone callers rely upon a system that can effectively route calls to the appropriate PSAP and provide location data that is highly accurate and secure.

Over the last ten years, the demands upon the 911 system have grown and changed significantly because of the widespread use of wireless telephones and the increasing acceptance of new calling technologies such voice over Internet protocol ("VoIP"). While the Federal Communications Commission ("FCC") has mandated certain technological obligations on the wireless and VoIP carriers, it has been up to the local PSAPs to deploy the necessary equipment that can receive and process these calls. Our county government, along with additional funding opportunities made available through the Florida Legislature, has committed significant resources to be able to handle these non-traditional, non-ILEC network calls, but it is going to take the deployment of next generation network services to enable PSAPs to be able to receive, process, and respond to these callers.

The issue with wireless and VoIP calls is especially acute. Under the best of circumstances location accuracy is far less accurate than if the call originated at a traditional landline phone. In addition, consumers increasingly desire the ability to text message a PSAP or to send real time photographs and video during an emergency situation, but PSAPs are unable to receive these messages using ILEC network services.

EXHIBIT "A"



MAILING ADDRESS

CIVIL DEPARTMENT ADDRESS



ADMINISTRATIVE BLDG COMPLEX

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Outside the wireless and VoIP environment, PSAPs face other challenges. During a hurricane, for example, the ability to seamlessly transfer an entire 911 center's calls to another 911 center would enable people to continue to reach first responders. In addition, it is not uncommon during a single event, such as a major traffic accident or other large event, for a 911 center to become overloaded with calls associated with that event, which may result in callers elsewhere in the county with other needs being blocked. The ability to "on the fly" reconfigure the 911 network to reroute calls originating from a specific geographic area that is overloading the system so that other callers can get through would be a life saving benefit to everyone. The network services that would enable this functionality can only be done through the deployment of next generation network services.

While as stewards of the 911 system, PSAP administrators have been moving forward with plans to deploy next generation network services such as are being offered by Intrado, we are constrained by some of the information we are receiving from the ILECs regarding alleged continuing obligations once the ILEC is no longer the network services provider. For example, as is related in Intrado's petition for declaratory statement, we have been told that if we choose Intrado as our network services carrier that Intrado and/or the PSAP may still be subject to certain ILEC tariff charges, or that the ILEC may create new tariff or other rate elements, or that other services we receive may be bundled with services we no longer receive resulting in the payment for unnecessary services.

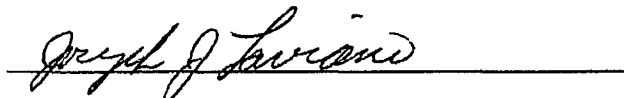
To be sure, I want to be clear that we do not have any issue with ILEC charges associated with services or rates for which there is a continuing legal duty, nor are we contesting any previously contractual for early termination or liquidated damages. These types of contractual obligations are not the subject of the declaratory statement request.

The consumers of Florida require a more robust emergency 911 system that serves all callers, whether from a traditional landline phone, a wireless phone, or over a VoIP network. Only through the deployment of next generation 911 services such as are being offered by Intrado will our county be able to receive and effectively serve 911 callers. However, in order to make this technology transition, we must be free from any legacy ILEC charges other than those for which those we have clear, specific obligations.

I strongly urge you to issue the requested declaratory statement. Feel free to contact me if there are any questions or the Commission needs additional information from us. Thank you for your consideration.

Sincerely,  
Robert L. Crowder, Sheriff

by:



Joseph J. Laviano, ENP  
Martin County E-911 Manager/E-911 Coordinator

cc: Parties of Record

# Office of the Sheriff



John Davenport  
Sheriff of Charlotte County

7474 Utilities Road  
Punta Gorda, Florida 33982  
(941) 639-2101

March 25, 2008

Ms. Ann Cole, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 080089, Intrado Petition for Declaratory Statement

Dear Ms. Cole,

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Since the first deployment of emergency 911 services in the 1960s, the technology to receive and respond to 911-dialed calls has evolved from a wireline ILEC telephone network perspective. Today, traditional landline telephone callers rely upon a system that can effectively route calls to the appropriate PSAP and provide location data that is highly accurate and secure.

Over the last ten years, the demands upon the 911 system have grown and changed significantly because of the widespread use of wireless telephones and the increasing acceptance of new calling technologies such as voice over Internet protocol ("VoIP"). While the Federal Communications Commission ("FCC") has mandated certain technological obligations on the wireless and VoIP carriers, it has been up to the local PSAPs to deploy the necessary equipment that can receive and process these calls. Our county government, along with additional funding opportunities made available through the Florida Legislature, has committed significant resources to be able to handle these non-traditional, non-ILEC network calls, but it is going to take the deployment of next generation network services to enable PSAPs to be able to receive, process, and respond to these callers.

The issue with wireless and VoIP calls is especially acute. Under the best of circumstances location accuracy is far less accurate than if the call originated at a traditional landline phone. In addition, consumers increasingly desire the ability to text message a PSAP or to send real time photographs and video during an emergency situation, but PSAPs are unable to receive these messages using ILEC network services.

EXHIBIT "B"

Outside the wireless and VoIP environment, PSAPs face other challenges. During a hurricane, for example, the ability to seamlessly transfer an entire 911 center's calls to another 911 center would enable people to continue to reach first responders. In addition, it is not uncommon during a single event, such as a major traffic accident or other large event, for a 911 center to become overloaded with calls associated with that event, which may result in callers elsewhere in the county with other needs being blocked. The ability to "on the fly" reconfigure the 911 network to reroute calls originating from a specific geographic area that is overloading the system so that other callers can get through would be a life saving benefit to everyone. The network services that would enable this functionality can only be done through the deployment of next generation network services.

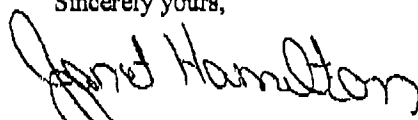
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To be sure, I want to be clear that we do not have any issue with ILEC charges associated with services or rates for which there is a continuing legal duty, nor are we contesting any previously contractual for early termination or liquidated damages. These types of contractual obligations are not the subject of the declaratory statement request.

The consumers of Florida require a more robust emergency 911 system that serves all callers, whether from a traditional landline phone, a wireless phone, or over a VoIP network. Only through the deployment of next generation 911 services such as are being offered by Intrado will our county be able to receive and effectively serve 911 callers. However, in order to make this technology transition, we must be free from any legacy ILEC charges other than those for which those we have clear, specific obligations.

I strongly urge you to issue the requested declaratory statement. Feel free to contact me if there are any questions or the Commission needs additional information from us. Thank you for your consideration.

Sincerely yours,



Janet Hamilton  
Charlotte County E911 Administrator

cc: Parties of Record

## CERTIFICATE OF SERVICE

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 1<sup>st</sup> day of April, 2008.

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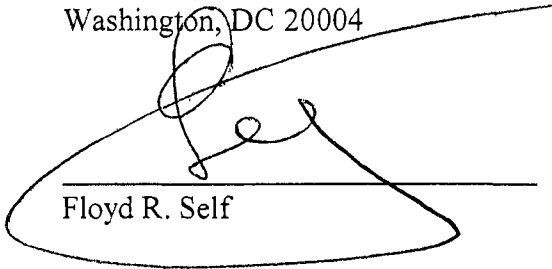
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