

## Ruth Nettles

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**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Tuesday, April 08, 2008 1:47 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 080089-TP  
**Attachments:** 2008-04-08, 080089, Intrado's Response to Verizon's Motion to Dismiss and Response to Intrado's Amended Petition for Declaratory Statement.pdf

The person responsible for this electronic filing is:

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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.

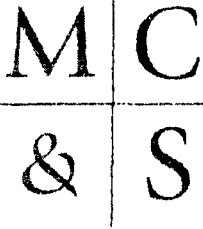
Total Number of Pages is 6.

Intrado Communications Inc.'s Response to Verizon's Motion to Dismiss and Response to Intrado's Amended Petition for Declaratory Statement.

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DOCUMENT NUMBER-DATE

02705 APR-8 8



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April 8, 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

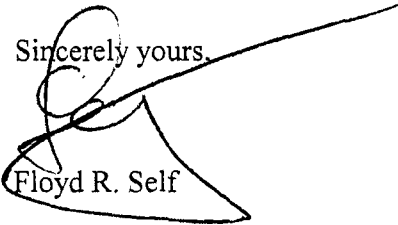
Re: Docket No. 080089-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Intrado Communications Inc. is an electronic version of Intrado Communications Inc.'s Response to Verizon Florida LLC'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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COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of  
Intrado Communications Inc.  
for Declaratory Statement  
Regarding Local Exchange  
Telecommunications Network  
Emergency 911 Service

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Docket No. 080089-TP  
Filed April 8, 2008

**RESPONSE TO VERIZON FLORIDA LLC'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 Verizon Florida LLC's ("Verizon") 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 charges and 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 14, 2008, Verizon filed a lengthy Motion to Dismiss and Response to Intrado's Petition for Declaratory Statement (the "Initial Motion").

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3. On March 14, 2008, Intrado filed an Amended Petition for Declaratory Statement. The only item amended 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 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 19, 2008, Intrado filed its Response to Verizon Florida LLC's Motion to Dismiss Intrado's Petition for Declaratory Statement.

5. On April 3, 2008, Verizon 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, Verizon merely incorporates its Initial Motion. (Amended Motion at p.1, ¶1) Therefore, for the reasons set forth in Intrado's March 19, 2008 Response to Verizon Florida LLC's Motion to Dismiss Intrado's Petition for Declaratory Statement, the Amended Motion which, by incorporation of the Initial Motion, suffers from numerous legal deficiencies including reliance on an incorrect standard applicable to declaratory judgments and not declaratory statements, should be denied.

6. In addition to the Motion to Dismiss, Verizon uses the Amended Motion as procedurally unauthorized vehicle to respond to Intrado's responses to the various motions to dismiss filed in this docket.<sup>1</sup> Despite the fact that the Amended Petition contains no substantive changes, and in an apparent effort to patch up the gross deficiencies in its Initial Motion, Verizon

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<sup>1</sup> Rule 28-106.204, F.A.C. specifically authorizes a response to a motion to dismiss. In responding to the various "motions to dismiss and responses" filed in this docket, Intrado has limited its filings to authorized responses to the motions to dismiss. Since no rule of procedure authorizes a response to a response, Intrado did not "respond to the response," indicating instead that a) there was no specific authority under the Uniform Rules for a response to a petition for Declaratory Statement, and b) any substantive response would be better suited for discussion and consideration by the Commission at the hearing in this docket. The rules of procedure have, however, been no deterrent to the intervenors in this proceeding, resulting in a deluge of procedurally unauthorized responses to responses. Verizon's "Second Bite Response" has no basis in fact or law, and should be rejected by the Commission.

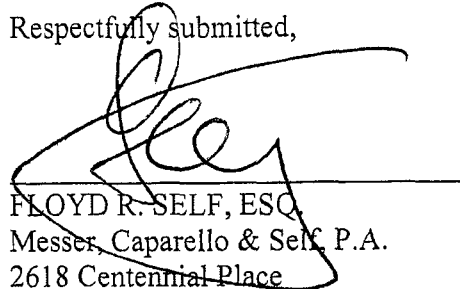
has now filed a response “in addition” to its earlier response. The response contained in the Amended Motion is nothing more than Verizon wanting a second bite of the apple. It serves no purpose but to allow Verizon to continue to argue the same arguments that it already made, hoping perhaps to gloss 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.<sup>2</sup> To the extent Verizon’s Amended Motion is not rejected by the Commission as being procedurally unauthorized, Intrado relies upon its March 19, 2008 Response to Verizon’s Initial 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.

7. For the reasons set forth herein, Intrado requests that the Commission deny Verizon’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.

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<sup>2</sup> As has been the case with each motion and response filed by the intervenors in this proceeding, the intervenors have assiduously declined to make any statement denying that, as alleged by Intrado, they intend to assess unwarranted tariff charges even after Intrado has entered into interconnection agreements and even after PSAPs have chosen to receive service competitively from a CLEC. The intervenors, including Verizon, have gone on for page after page about how payment of tariff charges by a CLEC or CLEC is not a proper subject for a declaratory statement. However, the intervenors have not once indicated how double payments for services to be provided by a CLEC can do anything but stifle competition. The Commission should take careful note of the extraordinary efforts taken by the ILEC intervenors to have this case dismissed on procedural grounds, so as to avoid having the Commission examine the practices described by the PSAPs (see Intrado’s Response to Embarq Florida, Inc.’s Motion to Dismiss or, in the Alternative, Deny Intrado’s Petition for Declaratory Statement and Amended Petition for Declaratory Statement, Exhibits A and B, filed March 28, 2008) on substantive grounds.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. Self', is written over a horizontal line. The signature is stylized and cursive.

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## 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 8<sup>th</sup> day of April, 2008.

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