

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 14, 2008

AMENDED PETITION FOR DECLARATORY STATEMENT

Intrado Communications Inc. ("Intrado"), pursuant to Section 120.565, Florida Statutes, and Rules 28-105.002 and 28-106.202, Florida Administrative Code, hereby files this Amended Petition for a Declaratory Statement from the Florida Public Service Commission ("Commission"). This Amended Petition seeks a declaration regarding 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. In support of its Petition, Intrado states as follows:

I. Introduction

1. Petitioner's name and address are:

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3. Intrado is a Delaware corporation authorized to do business in the state of Florida. Intrado is certificated by this Commission as a competitive local exchange telecommunications carrier ("CLEC"), holding Certificate Number 7736. Intrado has been assigned company code TX607 by the Commission.

II. 911 Services Background

4. Sections 365.171 through 365.175, Florida Statutes, provide the authority for the creation, funding, and operation of an emergency telecommunications number system to provide end users of local exchange telecommunications services with abbreviated access by landline and wireless carriers to emergency public safety agencies through a universal "9-1-1" dialed telephone number, and to allow the public safety agencies to identify the telephone number and location of the person placing the 911 call. The ability of the PSAP to identify the telephone number and the location of the calling party is referred to as "E911" services, to distinguish such services from the original 911 services which merely completed calls to a PSAP. 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. There are additional state and federal statutes, rules, and orders which impose obligations on ILECs as well as on CLECs, wireless carriers, Voice over Internet ("VoIP") providers, and other carriers which require them to deploy certain technologies and to follow certain network protocols as they interconnect with the public switched telephone network, of which the E911 network is part, in order to make available E911 services to their respective customers.

5. The first entity that answers the 911-dialed call is the PSAP, which is usually the county sheriff's office, the city police department, the fire department, or other local government entity that is charged with answering the 911 calls and dispatching first responders to deliver emergency assistance when necessary. Historically, the PSAPs have purchased the various local exchange telecommunications network services required to get the 911-dialed call to the PSAP's location from the serving ILEC pursuant to an ILEC 911 services tariff as well as unregulated customer premises equipment ("CPE") from the ILEC or another CPE provider.

6. Intrado has developed and is now offering to the PSAPs of Florida and throughout the country its E911 Intelligent Emergency Network® local exchange telecommunications services and equipment as a competitive alternative to ILEC bundled offerings. Intrado has the ability to provide E911 service for land line, wireless, and VoIP calling party end users, and ensuring that E911 calls are routed to the correct 911 call center regardless of device, protocol, or location. Indeed, for nearly 30 years Intrado has designed and deployed public safety infrastructure, systems, and services that have been relied upon and incorporated into the E911 connectivity and services offered by ILEC, CLEC, wireless, VoIP, and other carriers to their respective end users. Intrado now has the ability to provide E911 network service directly to the PSAPs at a competitive rate that includes both traditional E911 services as well as new and enhanced services and functionality, including text, imaging, and video capabilities along with greater interoperability and communications capability between and among emergency responders and the PSAPs.

7. In order for Intrado to be able to offer its E911 services to PSAPs, Intrado must interconnect and exchange local exchange telecommunications traffic with ILECs. Accordingly, Intrado is currently negotiating with various ILECs for such interconnection services and traffic

exchange. Pursuant to federal and state law, Intrado has filed petitions for arbitration with this Commission in furtherance of its efforts to interconnect with the ILECs.¹

8. Currently the ILEC tariffs offer certain network functions and services from the selective call router to the PSAP's demarcation point. These ILEC local exchange telecommunications services help to enable each PSAP to receive 911-dialed calls from the public. If a PSAP selects Intrado to provide those local exchange telecommunications services, neither Intrado nor the PSAP will be a customer or subscriber of the applicable ILEC's 911 services.² In such a case the ILEC should not charge Intrado for any tariffed 911 services previously provided to the PSAP unless Intrado specifically orders such services. However, to the extent Intrado requires any ILEC services, such services may be addressed in the interconnection agreement between Intrado and such ILEC since Intrado is a CLEC. In addition, the ILEC should no longer charge the PSAP for any of its tariffed 911 services nor should the ILEC create new rates, tariffed or otherwise, that it would seek to impose on Intrado or the PSAP.³ Likewise, the ILEC should not bundle its services in its tariff in such a manner as to require Intrado and/or the PSAP to pay for any services not actually requested or consumed.

9. Intrado has been in negotiations with PSAPs for the provision of its E911 service. Any PSAP selecting Intrado would no longer be a customer of the ILEC for 911 services.

¹ The Intrado petition for arbitration with AT&T is docketed in Docket No. 070736. The Intrado petition for arbitration with Embarq is docketed in Docket No. 070699. Intrado is not attempting to relitigate or collaterally address the substance of those arbitration proceedings in this declaratory statement. Rather, this petition is seeking to answer an entirely independent question – whether an ILEC may charge Intrado or a PSAP for 911 services when the PSAP has ceased to be a customer of the ILEC's 911 services and has selected Intrado to be the PSAP's provider of 911 services.

² This selection of Intrado to provide the PSAP with E911 IEN services is independent of, and has no relationship to, any terminal or other equipment on the PSAP's side of the demarcation point at the PSAP's premises that is provided by the ILEC or any other local exchange telecommunications services the PSAP may purchase from an ILEC such as non-emergency voice lines.

10. Intrado was in the process of negotiating with one PSAP when its negotiations were abruptly terminated by the PSAP. It was represented to Intrado that this negotiation was terminated because of the 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. For example, it has been suggested that an ILEC and/or the PSAP may seek unwarranted cost recovery by Intrado to rehome circuits. The effect of those representations was to cause the PSAP to believe it would be billed by both the ILEC and Intrado for certain services, thus making Intrado's service offering uncompetitive.

11. What matters at this juncture is not what may have been represented or assumed from reading the ILEC tariffs. Rather, all that is needed in the marketplace at this time is a statement by this Commission as to the respective rights and responsibilities of Intrado, the PSAP, and the ILEC once the PSAP has terminated the ILEC's 911 service, and neither Intrado nor the PSAP are customers of the ILEC's 911 tariff services. Accordingly, in order to ensure an effectively competitive market for E911 services, Intrado and the PSAPs are in need of a declaratory statement to resolve questions or doubts as to how the statutes, rules, orders, and tariffs discussed herein may apply to Intrado's particular circumstances.

III. The Declaratory Statement Request

12. A petition seeking a declaratory statement is appropriate when there is a need for "resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority." Section 120.565(1), Florida

³ Intrado notes that any successful change in providers from an ILEC's 911 services to Intrado's IEN E911 services will require a transition period and coordination between all of the affected parties. Intrado recognizes that during such a transition an ILEC may rightfully charge the PSAP for certain 911 tariffed services until such time as the ILEC's services to the PSAP are fully terminated. Intrado believes that the affected parties will cooperatively plan and implement such a transition in a competent and professional manner, working to ensure that at all times the integrity of the 911 call delivery system is fully operational. The calling public seeking emergency assistance deserves nothing less.

Statutes. ILEC tariffs are filed with and approved by the Commission pursuant to both statutory and Florida Administrative Code rule authority and such tariffs have the full force and effect of law as an order as if a statute or rule.⁴

13. For over 20 years this Commission has been in the forefront of advocating statutory changes or implementing rules and procedures to help transition monopoly-provided telecommunications services to a competitive marketplace. From long distance, to pay telephones, to shared tenant services, to alternative access vendors, and to competitive local exchange services a guiding principle has been that once an end user customer selects a new provider the former provider's relationship is terminated. Once the customer relationship has ended, all billing to that customer ceases and any services ordered by the new carrier from the former carrier are addressed by the carrier to carrier agreement or, in more limited circumstances, by special interconnection tariffs that apply to the class of carriers.⁵

14. It may seem intuitively obvious that once a customer terminates its service with an ILEC neither that end user nor the successive carrier selected by the end user can or should be charged after the effective termination dates. However, the applicable statutes, rules, orders, and tariffs do not directly or completely address this post-termination status. What the ILEC tariffs do say is what you would expect them to say – that a customer or subscriber is a person or other legal entity “which orders and is responsible for paying the telephone bill for any form of exchange

⁴ *Pan American World Airways, Inc. v. Florida Public Service Commission*, 427 So.2d 716 (Fla. 1983); *Reinschmitt v. Louisville & Nashville Railroad*, 160 So. 69 (Fla. 1935).

⁵ The most obvious example of a carrier to carrier interconnection occurring by tariff is in the area of pay telephones, where competitive pay telephone providers interconnect with the ILECs via special pay telephone interconnection tariffs which are applicable only to certificated carriers. On the other hand, CLEC and wireless carriers interconnect with ILECs through interconnection agreements negotiated or arbitrated under sections 251 and 252 of the Federal Act or sections 364.161 and 364.162, Florida Statutes.

service furnished by the Company.”⁶ There is no disputing that a PSAP is a customer or subscriber. The BellSouth tariff, for example, provides that BellSouth will provide 911 services “[w]hen requested by local government authorities”⁷ and that an “[a]pplication for E911 service must be executed in writing by each customer.”⁸ The Verizon tariff has similar language.⁹

15. The ILEC tariffs generally have language regarding post-termination obligations to pay for pre-termination services. This declaratory statement does not concern these types of post-termination obligations since they reflect services previously consumed but not paid for. These are obligations created by the customer.

16. This question of the provision of directly competitive local exchange telecommunications network 911 services appears to be a case of first impression. However, the BellSouth tariff does provide some language that at least recognizes that BellSouth may not always be the 911 provider to the PSAP. The tariff provides that “[s]ervice may be terminated at any time upon reasonable notice from the subscriber to the Company,”¹⁰ but that “[w]hen an order for 911 service and facilities . . . [is] cancelled in whole or in part” the subscriber must reimburse BellSouth for expenses incurred *before* notice of cancellation is received.¹¹

17. With respect to Intrado’s relationship to an ILEC, under both federal and state law a CLEC such as Intrado is entitled to enter into an interconnection agreement with an ILEC for the exchange of traffic and other services and network functionality. Any person or entity choosing to

⁶ The Windstream Florida and Embarq Florida local exchange tariffs have this exact same wording. *See* Windstream Florida, Inc., General Subscriber Services Tariff, Section 1, Original Page 19; Embarq Florida, Inc. General Exchange Tariff, Section A1, First Revised Sheet 10.

⁷ BellSouth Telecommunications, Inc. Florida, General Subscriber Service Tariff, Section A24, Original Page 1.

⁸ BellSouth Telecommunications, Inc. Florida, General Subscriber Service Tariff, Section A24, Original Page 4.

⁹ *See generally*, Verizon Florida Inc., General Services Tariff, Section A24.

¹⁰ BellSouth Telecommunications, Inc. Florida, General Subscriber Service Tariff, Section A2, Original Page 13.

¹¹ BellSouth Telecommunications, Inc. Florida, General Subscriber Service Tariff, Section A24.1.2.Q, Original Page 4 (emphasis supplied)

receive Intrado's E911 CLEC services becomes the subscriber of Intrado, and is no longer a customer of the ILEC. That CLEC customer should then be independent of and without any interference from the ILEC. Therefore, the ILEC is not entitled to bill Intrado's customer, the PSAP, for any former ILEC 911 data or connectivity services from the selective call router to the PSAP's demarcation point formerly subscribed to by the PSAP. For example, it would be inappropriate for the ILEC to attempt to charge the PSAP for ANI. Likewise, the ILEC should not charge the Intrado for such former ILEC 911 services or any bundled services since any ILEC services required by Intrado will be obtained by the parties' interconnection agreement or otherwise specifically ordered by Intrado.

18. In 1990, the Commission addressed a similar issue relating to the provision of 911 services. In that case, the ILECs were demanding that counties and municipalities obtain E911 terminal equipment or CPE from the ILEC. In finding such a monopoly to be a barrier to competition, the Commission found that:

Upon consideration, we find that neither Southern Bell nor any other LEC should be allowed to continue to be the sole provider of E911 terminal equipment in its serving territory. It is clear that there is a competitive market for E911 terminal equipment. We also note the existing desire of counties and municipalities to competitively bill [sic] for E911 equipment. Southern Bell's tariff restrictions as well as those of other LECs discriminate against other vendors and prohibit counties and municipalities from purchasing E911 systems that may better meet their technical and economic needs. We do not believe that sole equipment provider accountability is essential to the reliability or integrity of E911 service.^{12/}

While CPE is a deregulated, non-tariffed service, the principle in the Commission's 1990 Order applies with equal force now to the underlying 911 local exchange telecommunications network services and functionality now available to PSAPs by Intrado.

¹² *Proposed Agency Action to Require Unbundling of E911 Terminal Equipment and Allow for the Competitive Provision of E911 Equipment by Other Than the Serving LEC*, Docket No. 900297-TL, Order No. 22996, 1990 Fla. PUC LEXIS 607, *7 (Fla. Pub. Serv. Comm'n, May 29, 1990).

19. The application of tariff charges to services that have been terminated and which are provided competitively discriminates against competitive providers and is unlawful. Such actions create a barrier to entry and have a chilling effect on competition in violation of Section 364.01, Florida Statutes. Indeed, the threat or uncertainty associated with the application of such unjustified charges precludes PSAPs, local Florida government agencies, from purchasing new services or further enhancements to their existing services such as Intrado is now offering. To the extent terminated services are continued to be charged for by the ILEC also results in rates that are not fair, just, and reasonable in violation of Florida and federal law.

20. Intrado is substantially affected by the current regulatory uncertainty regarding the potential application of ILEC 911 tariff charges, untariffed charges, or unfairly unbundled charges to Intrado and/or the PSAPs.¹³ Until this uncertainty is resolved, Intrado and other competitive 911 providers are unable to effectively compete to offer PSAPs their E911 advanced services to the detriment of the calling public seeking emergency assistance. Such uncertainty, if left unresolved, would condone anticompetitive behavior and adversely affect Intrado's rights as a certificated CLEC in Florida. The Commission has clear jurisdiction to prevent such behavior pursuant to Section 364.01(4)(g), Florida Statutes.

21. The statutes, rules or orders on which the declaratory judgment is sought include the following:

- a. Alltel Florida, Inc., General Subscriber Services Tariff, Section 24.
- b. Alltel Florida, Inc., General Subscriber Services Tariff, Section 1.
- c. BellSouth Telecommunications, Inc. Florida, General Subscriber Service

¹³ Bundled ILEC retail tariffs would require the PSAPs to pay twice for one service. For example, a PSAP selecting Intrado's ALI service could continue to be subject to ILE ALI charges because some ILEC tariffs bundled ALI with other services. See, e.g., Public Service Commission of West Virginia Case No. 04-0102-T-GI, Frontier, et al. General

Tariff, Section A1.

- d. BellSouth Telecommunications, Inc. Florida, General Subscriber Service

Tariff, Section A24.

- e. Embarq Florida, Inc. General Exchange Tariff, Section A1.
- f. Embarq Florida, Inc. General Exchange Tariff, Section A10.
- g. Verizon Florida Inc., General Services Tariff, Section A24.
- h. Section 364.01(4)(g), Florida Statutes.
- i. Section 364.162, Florida Statutes.
- j. Section 364.03, Florida Statutes.
- k. Chapter 25-9, Florida Administrative Code

22. For the reasons set forth herein, Intrado requests that the Commission issue a Declaratory Statement that the statutes, rules, orders, and tariffs cited above do not allow an ILEC to collect 911 tariff charges, new unjustified charges, or unbundled charges from Intrado and/or the PSAPs when the PSAP has ceased to be a customer of the ILEC's 911 services.

23. As discussed in greater detail herein, Intrado is in need of a declaration from the Florida Public Service Commission regarding the following questions:

- a. Once a PSAP has selected Intrado to be its local exchange telecommunications network provider of 911 services, does Intrado or its customer have to pay an ILEC for any of the ILEC's 911 services that have been terminated by the PSAP and assumed by Intrado?

Investigation into the provision of Data Base Management Services and into who pays the costs of such services.
Commission Order, (Nov. 20, 2007) (Commission ordered Verizon-WV to make an unbundled rate offering).

b. Once a PSAP has selected Intrado to be its local exchange telecommunications network provider of 911 services, does Intrado or its customer have to pay an ILEC for post termination 911 services not currently in the ILEC's tariff?

c. Once a PSAP has selected Intrado to be its local exchange telecommunications network provider of 911 services, does Intrado or its customer have to pay an ILEC for bundled post-termination 911 charges with other charges that may be charged to Intrado and/or the PSAP?

24. For the reasons set forth herein, Intrado requests that the Florida Public Service Commission issue a Declaratory Statement:

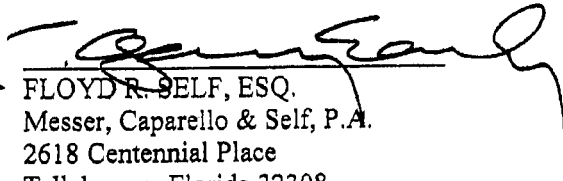
a. Establishing that Intrado and/or the PSAP is not required to pay for any tariffed ILEC 911 local exchange telecommunications network services previously provided to the PSAP unless Intrado or the customer specifically orders such services.

b. Establishing that Intrado and/or the PSAP is not required to pay for any terminated ILEC 911 services through new tariffed or non-tariffed rates.

c. Establishing that Intrado and/or the PSAP is not required to pay for any ILEC bundled services in such a manner as to require Intrado and/or the PSAP to pay for any terminated 911 services or otherwise for any 911 services not actually requested or consumed.

THEREFORE, Intrado Communications, Inc. respectfully requests that the Florida Public Service Commission grant the declaratory statement requested herein and declare that Intrado and/or the PSAP is not required to pay for any ILEC 911 tariff charges, untariffed charges, or bundled charges for terminated 911 services as set forth herein.

Respectfully submitted,


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