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June 13, 2008

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COMMISSION
CLERK

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

**Re: Docket No. 070736-TP: In the Matter of the Petition of
Intrado Communications Inc. for Arbitration Pursuant to
Section 252(b) of the Communications Act of 1934, as
Amended, to Establish an Interconnection Agreement with
BellSouth Telecommunications, Inc. d/b/a AT&T Florida**

Dear Ms. Cole:

Enclosed is an original and 15 copies of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Strike, or, in the Alternative, Motion to File Supplemental Rebuttal Testimony of Mark Neinast, 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,

Manuel A. Gurdian

cc: All Parties of Record
Gregory R. Follensbee
E. Earl Edenfield, Jr.
Lisa S. Foshee

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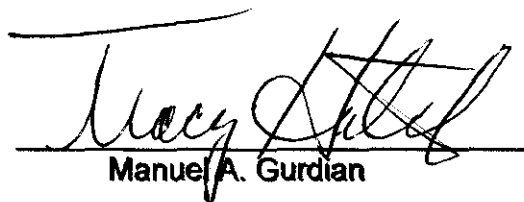
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CERTIFICATE OF SERVICE
Docket No. 070736-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and First Class U.S. Mail this 13th day of June, 2008 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Intrado Communications, Inc.)	Docket No: 070736-TL
For arbitration of certain rates, terms, and)	
Conditions for interconnection and related)	
Arrangements with BellSouth)	
Telecommunications, Inc. d/b/a AT&T Florida,)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as amended, and)	
Sections 120.80(13), 120.57(1), 364.15,)	
364.16, 364.161, and 364.162, F.S., and Rule)	
28-106.201, F.A.C.)	
<hr/>		Filed: June 13, 2008

**AT&T FLORIDA’S MOTION TO STRIKE OR, IN THE ALTERNATIVE,
MOTION TO FILE SUPPLEMENTAL REBUTTAL TESTIMONY**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”) respectfully submits this Motion to Strike¹ the Rebuttal Testimony of John R. Melcher filed by Intrado Communications Inc. (“Intrado Comm”) on May 28, 2008 or, in the alternative, Motion to File Supplemental Rebuttal Testimony of Mark Neinast. In support thereof, AT&T Florida states the following:

1. On March 21, 2008, the Prehearing Officer assigned to this docket issued Order No. PSC-08-0171-PCO-TP, setting forth the dates governing key activities of this case, including the filing of direct and rebuttal testimony.
2. On April 21, 2008, Intrado Comm and AT&T Florida filed direct testimony and exhibits.
3. On May 28, 2008, Intrado Comm and AT&T Florida filed rebuttal testimony and exhibits.
4. The Rebuttal Testimony of John R. Melcher filed on behalf of Intrado Comm goes well beyond the appropriate scope of rebuttal testimony and contains

¹ AT&T Florida’s Motion to Strike only challenges the testimony as improper rebuttal testimony and AT&T Florida does not waive some other basis for its inadmissibility.

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discussion, arguments and analysis that should have been part of Intrado Comm's case-in-chief, i.e. direct testimony.

5. Intrado Comm is improperly and belatedly attempting to expand its own direct case by masquerading previously undisclosed analysis and testimony as "rebuttal" testimony.

6. This practice is unfair and prejudicial to AT&T Florida and is an impermissible expansion of the role and purpose of rebuttal testimony.

7. The purpose of rebuttal evidence is to "explain, repel, counteract, or disprove the evidence of the adverse party." *United States v. Delk*, 586 F.2d 513, 516 (5th Cir. 1978).

8. It is well settled that rebuttal testimony should be limited in its response to the issues that were brought out by the opposing party's direct case:

Generally speaking, rebuttal testimony which is offered by the plaintiff is directed to new matter brought out by evidence of the defendant and *does not consist of testimony which should have been properly submitted by the plaintiff in his case-in-chief. It is not the purpose of rebuttal testimony to add additional facts to those submitted by the plaintiff in his case-in-chief unless such facts are required by the new matter developed by the defendant.* (Emphasis added).

Driscoll v. Morris, 114 So.2d 314, 315 (Fla. 3d DCA 1959). *See also*, Docket Nos. 050119-TP, 050125-TP, Order No. PSC-06-0261-PCO-TP ("[R]ebuttal testimony should be limited in its response to issues brought out by the opposing party's direct case").

9. Contrary to the well recognized parameters for rebuttal, Mr. Melcher's rebuttal testimony does not respond to any specific assertions set forth by AT&T Florida in its direct testimony, but instead raises new analyses and arguments that are intended to

bolster Intrado Comm's claims and which should have been submitted as part of Intrado Comm's case-in-chief. Moreover, in Mr. Melcher's testimony there is no mention whatsoever or a citation to any of the direct testimony offered by AT&T Florida.²

10. Specifically, "Section II- Background" contained on page 3, line 6 through page 10, line 5 is not rebuttal testimony and does not "rebut" any direct testimony filed by AT&T Florida. Moreover, there is no mention of nor citation to any direct testimony offered by AT&T Florida.

11. With regard to Mr. Melcher's testimony entitled "Section III – Unresolved Issues" on page 10, line 6 through page 13, line 11, Mr. Melcher puts forth testimony on Issues 3(a) and 3(b) just as a witness would normally do in direct testimony; however, Mr. Melcher does not "rebut" any of the direct testimony filed by AT&T Florida and does not even mention nor cite to any AT&T Florida direct testimony that it is "rebutting".

12. The filing of direct testimony after the deadline imposed by the Prehearing Officer is improper and violates the Order Establishing Procedure. Intrado Comm's end around of the Commission's Order should not be permitted by the Commission.

13. Presiding officers in Commission proceedings have significant discretion when ruling on motions to strike testimony. Specifically, pursuant to Rule 28-106.211, Florida Administrative Code, "the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the

² Indeed, Mr. Melcher does not indicate that he is rebutting any testimony filed by AT&T Florida and states that the "purpose of [his] testimony is to provide information on some of the technical issues raised in this proceeding from an industry perspective." Rebuttal Testimony of John R. Melcher at page 3, lines 3-5.

just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the process.”

14. However, while a “presiding officer has significant discretion in allowing testimony, the party filing testimony has an obligation to show that the testimony it has presented is legally proper upon a challenge by another party to the case.” *In re: Joint petition by TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications, Systems, Inc. and Frontier Communications of the South, LLC objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.*, Docket Nos. 050119-TP, 050125-TP, Order No. PSC-06-0261-PCO-TP (Issued March 28, 2006).

15. The relief requested by BellSouth through this motion, specifically that Mr. Melcher’s rebuttal testimony be stricken, is supported by Commission precedent. In Order No. PSC-00-1779-PCO-SU, issued September 29, 2000, in Docket No. 991643-SU – *In re: Application for increase in wastewater rates in Seven Springs in Pasco County by Aloha Utilities, Inc.*, the Prehearing Officer agreed with the utility that portions of the Office of Public Counsel’s testimony did not constitute proper rebuttal testimony and granted the utility’s motion to strike those portions of the purported rebuttal testimony. In granting the utility’s motion to strike, the Prehearing Officer stated:

Upon consideration, I find that Mr. Bidy’s proffered rebuttal testimony is direct testimony that OPC could have or should have filed in its direct testimony. The used and useful calculation and the issue of infiltration and inflow have been identified as issues in this proceeding and should have been addressed in OPC’s direct testimony. Therefore, Aloha’s Motion to Strike “Rebuttal” Testimony is hereby granted.

Order, at page 2.

16. Similarly, in Order No. PSC-00-0087-PCO-WS, issued January 10, 2000, in Docket No. 960545-WS – *In re: Investigation of utility rates of Aloha Utilities, Inc. in Pasco County*, the Commission granted a motion filed by the Intervenor to strike testimony filed by the utility that had been styled as rebuttal testimony, but did not rebut any of the parties' testimony and was therefore, not proper rebuttal testimony.

17. In Order No. PSC-06-0261-PCO-TP, issued March 28, 2006, in Docket Nos. 050119-TP, 050125-TP, the Prehearing Officer struck a portion of the rebuttal testimony that did not rebut any specific assertion of direct testimony and stated that “[t]his portion of [the witness’] testimony is procedurally deficient because it does not rebut any specific assertions of direct testimony. Rather, it directly addresses the tentative issues identified in this proceeding, as is typically done in direct testimony.”

18. In the alternative, if the Commission does not grant the relief requested by AT&T Florida by striking Mr. Melcher’s testimony, AT&T Florida requests that the Commission allow it to file the attached supplemental rebuttal testimony of Mark Neinast to afford AT&T Florida an opportunity to respond to Mr. Melcher’s testimony.

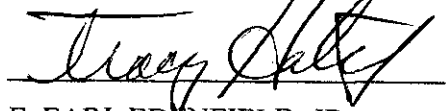
19. Undersigned counsel contacted counsel for Intrado Comm prior to the filing of the instant pleading to ascertain whether Intrado Comm would withdraw Mr. Melcher’s testimony and, thus, obviate the need for the filing; however, Intrado Comm did not respond to AT&T Florida’s inquiry.

WHEREFORE, for the foregoing reasons, AT&T Florida respectfully requests that the Commission issue an Order striking the Rebuttal Testimony of John R. Melcher

or, in the alternative, allow AT&T Florida to file the attached supplemental rebuttal testimony of Mark Neinast.

Respectfully submitted this 13th day of June 2008.

AT&T FLORIDA



E. EARL EDENFIELD, JR.

TRACY W. HATCH

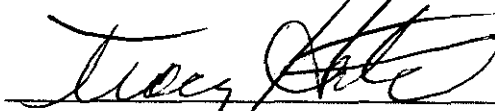
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