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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Docket No. 070699-TP

**Petition of Intrado Communications Inc. Pursuant to Section 252(b) of the
Communications Act of 1934, as amended, to Establish an Interconnection
Agreement with Embarq Florida Inc.**

REBUTTAL TESTIMONY OF CAREY F. SPENCE-LENSS

May 28, 2008

**Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS
FOR THE RECORD.**

A: My name is Carey F. Spence-Lens. My business address is 1601 Dry Creek Drive, Longmont, CO, 80503. I am Vice President of Regulatory and Government Affairs for Intrado Inc. and its affiliate, Intrado Communications Inc. ("Intrado Comm").

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: The purpose of my Rebuttal Testimony is to address the following issues to counter the assertions raised in the pre-filed testimony of Embarq Florida Inc. ("Embarq"): (i) Intrado Comm's intent to provide current technologies to Public Safety Answering Points ("PSAPs") today as well as a path to next-generation 911; (ii) the growing competitive 911 marketplace that exists today; and (iii) Intrado Comm's presence in the market will enhance competition and combat Embarq's monopoly.

SECTION I - BACKGROUND

1 **Q: WILL INTRADO COMM PROVIDE PSAPs WITH ACCESS TO**
2 **CURRENT TECHNOLOGIES?**

3 **A:** Yes. Counties in Florida will have access to current technologies as well as a
4 path to next-generation applications and services. Intrado Comm also
5 proposes a framework whereby PSAPs will have the interoperability they
6 need, and have requested, for critical emergency response.

7 **Q: ARE COMPETITIVE ALTERNATIVES TO ILEC-PROVIDED 911**
8 **SERVICES AVAILABLE IN OTHER STATES TODAY?**

9 **A:** Yes. Competition is occurring in Texas, for example. At least five states and
10 multiple cities and counties are using competitive vendors (not ILECs) for 911
11 networks, database, and customer premises equipment. Likewise, at least one
12 state and one district are using competitive vendors (not ILECs) for wireless
13 911 call routing. As newer technologies evolve and are made available to the
14 marketplace, the list of competitive entrants will grow. Most importantly,
15 competitive entry provides options for the public safety industry that do not
16 exist today.

17 **Q: PLEASE EXPLAIN WHY INNOVATIVE 911 SYSTEMS ARE**
18 **IMPORTANT TO FLORIDA CONSUMERS AND PUBLIC SAFETY**
19 **AGENCIES.**

20 **A:** The introduction of E911 in 1972 represented a significant improvement in
21 basic 911 service. Changes in 911 services largely have been driven by
22 consumer demand for competitive options and new technology. The United
23 States is actually in its fifth generation of 911 service, the progression being:

1 (1) basic 911 service; (2) enhanced 911 service; (3) CLEC market entry; (4)
2 wireless (real-time mobility); and (5) IP-enabled services, including VoIP.
3 Today, consumer expectations, newer and less voice-centric technologies, and
4 major world events are necessitating further changes in 911 service
5 capabilities. The importance of public safety requires looking beyond the
6 existing legacy structure towards a more robust and secure 911 network that
7 can manage both voice and data delivered from multiple types of service
8 providers. Advanced 911 systems expand the degree to which new,
9 contextually appropriate information can be automatically provided to
10 emergency service personnel on a real-time basis. Intrado Inc.'s and Intrado
11 Comm's own emergency service evolution reflects the need to adjust and
12 adapt to meet public safety's growing critical response needs (Exhibit No. ____
13 (Spence-Lenss, Rebuttal Exhibit No. CSL-12). Florida consumers expect
14 their 911 calls to go to the right PSAP in the event of an emergency. Callers
15 to 911 expect the call-taker to know who they are, where they are, and have
16 access to their telephone number in case the call is interrupted and they need
17 to be re-contacted. They also expect to receive help from emergency first
18 responders, even in cases where the caller cannot convey his or her location or
19 the nature of the problem due to the emergency circumstances or disability.
20 The legacy systems are unable to do this today and will continue to
21 progressively decline in their ability to keep pace with the warp-speed
22 changes in communications technology, new and multiple service providers,
23 and consumer expectations for timely and accurate public safety service

1 responses. Intrado Comm is able to respond to its public safety customers to
2 address these limitations. The incumbent monopoly 911 service providers also
3 recognize the limitations of their existing emergency networks in
4 accommodating more mobile and less voice-centric communication
5 technologies. Many ILEC providers have implied they are planning to develop
6 and deploy their own advanced network technologies. Recognizing that the
7 migration path for the incumbent's advanced 911 network will not result in
8 the immediate replacement of the legacy infrastructure for all PSAPs
9 simultaneously, it is extremely likely that their migration plans will be
10 inclusive of the same types of interconnection and interoperability being
11 sought by Intrado Comm in this proceeding.

12 **SECTION II - UNRESOLVED ISSUES**

13 *Issue 1(b): Of the services identified in (a), for which, if any is Embarq required*
14 *to offer interconnection under Section 251(c) of the Telecommunications Act of*
15 *1996?*

16 **Q: EMBARQ CLAIMS INTRADO COMM IS USING THE SECTION 251**
17 **PROCESS TO "SHIFT" COSTS TO COMPETING CARRIERS LIKE**
18 **EMBARQ. IS THIS TRUE?**

19 **A:** No. Embarq has incorrectly assumed that Intrado Comm is attempting to shift
20 costs to Embarq based on the Petition for Declaratory Statement filed by
21 Intrado Comm. The requests made by Intrado Comm in the Petition for
22 Declaratory Statement have nothing to do with Intrado Comm's right to
23 Section 251(c) interconnection with Embarq.

1 **Q: WHAT DID THE PETITION FOR DECLARATORY STATEMENT**
2 **ASK THE COMMISSION TO FIND?**

3 **A:** Intrado Comm’s 911 service offerings will compete directly with Embarq’s
4 similar offerings. When a county or other local government entity that serves
5 as the public safety answering point (“PSAP”) selects or “presubscribes to”
6 Intrado Comm for its 911/E911 services, Intrado Comm will provide the
7 selective routing, transport and automatic location information (“ALI”)
8 services. The PSAP will no longer require these same services from Embarq.
9 Embarq will, in effect, be like any other local telecommunications provider
10 that has to fulfill its obligations to provide 911 routing to its dial tone end
11 users. Embarq, like all the competitive local exchange carriers (“CLECs”)
12 and wireless providers serving a local area, will be required to interconnect
13 with Intrado Comm as the new 911/E911 service provider for that PSAP. In
14 the Petition for a Declaratory Statement, Intrado Comm sought clarification
15 from the Commission on the issue of whether Intrado Comm or the PSAPs
16 could be charged for services by Embarq (and other incumbents) after the
17 PSAP has designated Intrado Comm as its 911/E911 service provider.

18 **Q: PLEASE EXPLAIN COMMISSION’S DECISION CONCERNING A**
19 **PSAP’S RIGHT NOT TO BE CHARGED FOR**
20 **TELECOMMUNICATIONS SERVICES IT IS NOT RECEIVING.**

21 **A:** The Commission’s decision makes it clear that PSAPs may not be charged for
22 services not received. Staff stated, “The law is clear that telecommunications
23 companies may not charge for services they do not provide.”

1 **Q: WHY WAS THE PETITION FOR DECLARATORY STATEMENT**
2 **NECESSARY?**

3 A: Intrado Comm expected Embarq and other incumbent 911/E911 service
4 providers to fight to maintain their monopoly control over PSAPs in Florida.
5 However, Intrado Comm was shocked by the efforts of some ILECs to deny
6 the PSAPs a competitive choice. The Petition for Declaratory Statement was
7 designed to ease the PSAPs' concerns and clearly establish that the ILECs
8 could not continue to charge PSAPs for services when the PSAP had
9 presubscribed to Intrado Comm. Some of the letters demonstrating the
10 PSAPs' concerns are attached to my Direct Testimony at Exhibit ____ (CSL-
11 5).

12 **Q: WHY IS THE COMMISSION'S DECISION IMPORTANT IN THIS**
13 **ARBITRATION PROCEEDING?**

14 A: While the Commission's decision states the obvious, it provides an important
15 affirmation needed by the public safety community: Embarq and other
16 incumbents may not charge for services they no longer provide.

17 **Q: WHY ARE COST AND COMPENSATION ISSUES AT DISPUTE IN**
18 **THIS PROCEEDING?**

19 A: Embarq has characterized the Petition for Declaratory Statement as Intrado
20 Comm's "cost-shifting" (Maples Direct, page 47, line 9) and "regulatory
21 arbitrage" (Maples Direct, page 7, line 24). Throughout its testimony,
22 Embarq asserts that Intrado Comm is entering the market based on "cost-
23 shifting. Embarq appears to equate competition in the 911/E911 market as

1 subordinating Embarq to the role of subsidizing Intrado Comm's market
2 entry.

3 **Q: DOES INTRADO COMM EXPECT EMBARQ TO "SUBSIDIZE"**
4 **INTRADO COMM'S ENTRY INTO THE MARKET?**

5 **A:** No. But it is not surprising that Embarq is struggling with the prospect of a
6 direct competitor for 911 services in Florida.

7 **Q: IS IT SUSTAINABLE FOR A NEW ENTRANT IN THE 911 SERVICES**
8 **MARKET TO COMPETE BASED ON INCUMBENT OR OTHER**
9 **COMPETITORS' SUBSIDIZATION?**

10 **A:** Although I am not an economist, Intrado Comm cannot compete merely by
11 "cost-shifting" to existing providers, nor is such a structure consistent with
12 federal and state pro-competitive policies. As explained in the Rebuttal
13 Testimony of Thomas W. Hicks, Intrado Comm's Intelligent Emergency
14 Network® is a more efficient and technologically advanced E911 network
15 design.

16 **Q: DO EMBARQ'S PROPOSALS AFFECT INTRADO COMM'S COSTS?**

17 **A:** Contrary to Embarq's assertions that it will be cheated of legitimate charges to
18 PSAPs, it is Embarq that is inappropriately including charges for certain
19 activities related to local exchange provisioning. These are costs that all of
20 the other local service providers cover as part of their doing business, but
21 Embarq wants special treatment. For example, the costs associated with
22 providing access to E911 services up to the demarcation points of the selective
23 router and E911 database management system should not be included in

1 incumbent tariffs as a PSAP cost and they are clearly inapplicable when the
2 PSAP selects Intrado Comm as the 911 network provider.

3 **Q: WILL THE INTERCONNECTION AGREEMENT BETWEEN**
4 **INTRADO COMM AND EMBARQ SUPPORT THE MUTUAL**
5 **EXCHANGE OF TRAFFIC?**

6 **A:** Yes. While 911 trunks are one-way, they are capable of originating a call in a
7 conferencing capacity, and are used for two-way traffic purposes. For
8 example, once a 911 call is delivered over the one-way trunks to the PSAP,
9 the PSAP may then “hookflash” to obtain dial tone to originate a bridged call
10 to a third party. Further, although these trunks are engineered as one-way
11 they are capable of supporting two-way voice communications.

12 Embarq’s testimony (Maples Direct, page 26) ascribes a narrow view of
13 “mutual exchange of traffic” that is illogical and not consistent with how
14 traffic is provisioned and transported in the 911 network today. Embarq
15 indicates that “mutual exchange of traffic” must literally occur on the same
16 trunk. As is well established in the network today, the “mutual exchange” of
17 traffic need not actually occur over the same trunks, and may be properly
18 reflected by traffic flows of originating and terminating traffic between the
19 various trunking configurations established between the interconnected
20 parties.

21 **Q: AREN’T 251(C) INTERCONNECTION AGREEMENTS USED TO**
22 **ESTABLISH INTERCONNECTION ARRANGEMENTS FOR OTHER**
23 **TYPES OF “ONE-WAY” TRAFFIC?**

1 A: Yes. Section 251(c) interconnection agreements often contain provisions
2 relating to 800 or toll-free services, operator services, directory assistance,
3 telecommunications relay service (711), and other types of services that are
4 typically viewed as “one-way” services.

5 **Q: EVEN IF 911 SERVICES WERE CONSIDERED TO BE ONE-WAY,**
6 **DOES THAT CHANGE THEIR CHARACTER AS TELEPHONE**
7 **EXCHANGE SERVICES?**

8 A: No. The Federal Communications Commission, for example, has found that
9 facsimile communications are telephone exchange services (*Advanced*
10 *Telecommunications Capability*, 15 FCC Rcd 385, ¶ 21 (1999)).

11 **Q. PLEASE EXPLAIN WHY INTRADO COMM SERVICES ARE**
12 **TELECOMMUNICATIONS SERVICES RATHER THAN**
13 **INFORMATION SERVICES.**

14 A. While E911 services may contain an information service component (such as
15 the Automatic Location Information (“ALI”) function), the comprehensive
16 911 service offered to PSAPs by ILECs today, and the Intrado Comm 911
17 service soon to be provided, are telecommunications services and treated as
18 telephone exchange services under the law and as evidenced by ILEC tariffs.
19 In part, this is because all local exchange service providers must provide 911
20 calling to their customers. Today the obligation to provide 911 dialing to
21 customers also flows to wireless service providers and IP-enabled service
22 providers.

23 The provision of 911 services historically has been managed at the

1 local level by the ILEC. An effective 911 service requires the caller to be
2 mapped to the closest PSAP (this is done at the Selective Router) to ensure
3 emergency personnel closest to the caller can be dispatched. The Master
4 Street Address Guide (“MSAG”) maps the emergency personnel in the area to
5 the relevant PSAP. The Automatic Location Identification (“ALI”) database
6 contains customer information associated with the telephone number to assist
7 the PSAP. The perception of the consumer, whether a 911 caller or PSAP, is
8 that 911 service once dialed will ensure a caller’s location is identified, the
9 correct PSAP is reached, and sufficient information is available to deploy the
10 geographically relevant emergency personnel to the caller’s location. Under a
11 traditional end-to-end analysis, where a 911 call originates and where the call
12 ultimately terminates will be in close proximity. The technology used to place
13 the call is irrelevant to this analysis.

14 The service under consideration in the instant proceeding is the 911
15 service to be provided by Intrado Comm, not the nature of the service used by
16 the caller to dial 911. For example, while interconnected VoIP services have
17 been defined as jurisdictionally interstate and not classified as either
18 telecommunications service or information service, a 911 call from a VoIP
19 service user has no effect on the classification of 911 services provided to
20 PSAPs by Intrado Comm, which are telephone exchange services as
21 determined by this Commission and the FCC. Thus, ILECs naturally tariff
22 their 911 services in their local exchange tariffs because the service is
23 considered to be a local exchange service.

1 In addition, the comprehensive 911 service as defined by the FCC and
2 tariffed by the ILECs clearly falls within the definition of “Telephone
3 Exchange Service.” This term is intended to include not only the provision of
4 traditional local exchange service, but also the provision of
5 telecommunications services that may be separate from the public switched
6 telephone network and is a “comparable service provided though the system
7 of switches, transmission equipment, or other facilities (or combination
8 thereof) by which a subscriber can originate and terminate a
9 telecommunication service” (47 U.S.C. § 153(47); *Federal-State Joint Board
10 on Universal Service*, 13 FCC Rcd 11830, ¶ 12 (1998)). The information
11 service piece of the 911 service, ALI, is an inextricable part of the 911 service
12 provided to PSAPs as demonstrated by the FCC’s definition of 911 services
13 and the unbundled access requirement imposed on ILECs to make the 911
14 databases available as telecommunications services in the interest of
15 promoting local competition (*VoIP 911 Order*, 20 FCC Rcd 10245, ¶ 15
16 (2005); 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.319(f)). Without exception,
17 911 services are telephone exchange services when the ILECs provided them
18 and they are telephone exchange services when Intrado Comm provides them.

19 **Q: DOES INTRADO COMM HAVE RETAIL END USERS IN FLORIDA?**

20 **A:** Yes, the PSAPs that Intrado Comm will serve are retail end users, just like any
21 other multi-line, PBX, or other such user. Today, PSAPs are purchasing
22 services from the ILECs at retail rates via a retail tariff and are therefore

1 accorded end user status by the ILEC. These users should be treated no
2 differently when being served by Intrado Comm.

3 **Q: IS IT YOUR UNDERSTANDING THAT AGREEMENTS**
4 **GOVERNING THE INTERCONNECTION OF NETWORKS ARE**
5 **REQUIRED TO BE FILED WITH STATE COMMISSIONS AND ARE**
6 **SUBJECT TO SECTION 252 OF THE ACT?**

7 **A:** I understand that any agreement that creates an ongoing obligation pertaining
8 to interconnection, unbundled network elements, or collocation is considered
9 an interconnection agreement subject to the requirements of Section 252
10 (*Qwest Communications International Inc. Petition for Declaratory Ruling on*
11 *the Scope of the Duty to File and Obtain Prior Approval of Negotiated*
12 *Contractual Arrangements under Section 252(a)(1), Memorandum Opinion*
13 *and Order, 17 FCC Rcd 19337 (2002)*). There are similar Florida law
14 requirements.

15 **Q: WHY DO YOU THINK THIS IS REQUIRED?**

16 **A:** Subjecting all interconnection agreements to the requirements of Section 252
17 reduces the ability of the parties to the agreement to engage in discrimination.

18 **Q: WILL THE PRESENCE OF INTRADO COMM ENHANCE**
19 **COMPETITION?**

20 **A:** Yes. Intrado Comm's 911 service for PSAPs is a competitive alternative to the
21 services offered by the ILECs, consistent with the intent of Act. The Act
22 imposes strict codes of conduct on the incumbent under Sections 251 and 252
23 to ensure new entrants can enter markets where competition historically has

1 not existed. The provision of 911 service to PSAPs is one of the last consumer
2 markets yet to receive the benefits of competition. Intrado Comm’s entry into
3 the market will begin to erode the monopoly dominance to which PSAP
4 consumers have been subject. Also, Intrado Comm’s innovative 911
5 competitive service directly responds to the goals of Congress and the Federal
6 Communications Commission (“FCC”) by providing “meaningful automatic
7 location identification information that permits first responders to render aid,
8 regardless of the technology or platform employed” by the caller (*Wireless*
9 *E911 Location Accuracy Requirements*, 13 FCC Rcd 10609, ¶ 6 (2007)). As
10 the FCC has determined, it is imperative that public safety officials receive
11 “accurate and timely information concerning the current location of an
12 individual who places an emergency call, notwithstanding the platform or
13 technology used by the provider or the means by which the individual places
14 the call.” (*Telecommunications Relay Services and Speech-to-Speech Services*
15 *for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 23
16 (2008)). Similarly, the Florida legislature has declared its intent in Section
17 364.171(2) “to implement and continually update a cohesive statewide
18 emergency communications number “E911” plan for enhanced services.”
19 Further, in Section 364.172(2)(d) the Legislature has found that the 911 fees
20 should be administered “in a manner that is competitively and technologically
21 neutral as to all voice communications services providers.” Finally, the
22 Legislature in Section 364.172(9)(b) has found it appropriate for the 911 fee
23 revenues to “be used for next-generation E911 network services.” Consistent

1 with these legislative directives, Intrado Comm is at the forefront of next-
2 generation competitive 911 offerings to counties in Florida that will be
3 capable of providing a seamless comprehensive emergency network, with
4 ubiquitous across various telecommunications platforms, regardless of the
5 callers underlying technology used to make the call.

6 **Q: WHEN INTRADO COMM PROVIDES 911 SERVICES, WILL THE**
7 **PSAP CONTINUE TO HAVE A RELATIONSHIP WITH THE ILEC?**

8 **A:** Yes, but only to the extent the PSAP continues to purchase service from the
9 ILEC. As this Commission has now declared, “The law is clear that
10 telecommunications companies may not charge for services they do not
11 provide.”

12 **Q: DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

13 **A:** Yes.

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