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From: terry.scobie@verizon.com
Sent: Monday, March 31, 2008 12:20 PM
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Cc: de.oroark@verizon.com; demetria.g.clark@verizon.com; David Christian; Kimberly Caswell
Subject: Docket No. 080134-TP - Verizon Florida LLC's Motion to Hold in Abeyance Intrado Communications Inc.'s Petition for Arbitration
Attachments: 080134 VZ FL Abeyance Motion-3-31-08.pdf



The attached filing is submitted in Docket No. 080134-TP on behalf of Verizon Florida LLC by

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The attached document consists of a total of 9 pages (cover letter-1 page, Motion-7 pages, and Certificate of Service-1 page).

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FPSC-COMMISSION CLERK

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March 31, 2008 – **VIA ELECTRONIC MAIL**

Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 080134-TP
Petition by Intrado Communications, Inc. for arbitration to establish an
interconnection agreement with Verizon Florida LLC, pursuant to Section 252(b)
of the Communications Act of 1934, as amended, and Section 364.162, F.S.

Dear Ms. Cole:

Enclosed for filing in the above-referenced matter is Verizon Florida LLC's Motion to
Hold in Abeyance Intrado Communications Inc.'s Petition for Arbitration. Service has
been made as indicated on the Certificate of Service. If there are any questions
regarding this filing, please contact me at (678) 259-1449.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Intrado Communications, Inc. for) Docket No. 080134-TP
arbitration to establish an interconnection agreement) Filed: March 31, 2008
with Verizon Florida LLC, pursuant to Section 252(b))
of the Communications Act of 1934, as amended,)
and Section 364.162, F.S.)
-----)

**VERIZON FLORIDA LLC'S MOTION TO HOLD IN ABEYANCE
INTRADO COMMUNICATIONS INC.'S PETITION FOR ARBITRATION**

Verizon Florida LLC ("Verizon") asks the Commission to hold in abeyance the Petition for Arbitration ("Petition") filed by Intrado Communications Inc. ("Intrado") on March 5, 2008. There are two reasons for this request. First, the threshold issue in this arbitration—whether Intrado is entitled to arbitration under Section 252 of the Telecommunications Act of 1996 ("Act") and to Section 251(c) interconnection—is already before the FCC. To prevent wasting its resources and a potential conflict with the FCC, this Commission should wait for the FCC to answer the threshold question of whether arbitration of Intrado's Petition is appropriate. Second, even if the Commission decides to proceed to arbitration without waiting for a ruling on the threshold issue, it should still grant a defined abeyance to allow the parties to negotiate issues that were raised by Intrado just a short time before filing its Petition.

A. The Commission Should Not Proceed to Arbitration Until the FCC Decides Whether Intrado Is Entitled to Arbitration.

Intrado's Petition presents 41 issues for arbitration (and Verizon has raised an additional four issues generated by Intrado's proposals). The first issue in Intrado's Petition asks whether Intrado is entitled to Section 251(c) interconnection and to

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arbitration under Section 252 of the Act. It would make no sense to proceed to arbitration on all 45 issues without first resolving the threshold issue of whether arbitration should go forward at all. If Intrado is not entitled to interconnection and arbitration under the Act, then it will be unnecessary for the Commission to decide the remaining issues.

This Commission could decide the threshold issue itself, before proceeding to arbitration. But the issue of whether Intrado is entitled to arbitration under the Act is already teed up at the FCC. In November of last year, Intrado filed a Petition for Arbitration against Embarq in Virginia, seeking the same sort of arrangements Intrado is seeking from Verizon here. The first issue in the Intrado/Embarq Virginia Petition was the same as the first issue in Intrado's Petition against Verizon here—that is, whether Intrado is entitled to Section 251(c) interconnection and Section 252 arbitration.

The Virginia Commission dismissed Intrado's petition for arbitration against Embarq, finding that the FCC should first decide whether Intrado was entitled to arbitration:

In this case, we find there is a threshold issue that should be determined by the Federal Communications Commission ("FCC"). Therefore, we believe that the FCC is the more appropriate agency to determine whether Intrado is entitled to interconnection pursuant to § 251(c) of the Telecommunications Act.¹ As a result, based upon the potential conflict that may arise should the Commission attempt to determine the rights and responsibilities of the parties under state law or through application of the federal standards embodied in the Telecommunications Act, we find that this arbitration proceeding should be deferred to the FCC.²

¹ "We note that until such time as this threshold issue is resolved that it would be inappropriate to resolve the other disputed issues. Therefore, we will defer resolution of all issues in Intrado's Petition to the FCC."

² *Petition of Intrado Comm. of Virginia, Inc. for Arbitration to Establish an Interconnection Agreement with Central Telephone Co. of Virginia d/b/a Embarq and United Tel.-Southeast, Inc. d/b/a Embarq, under Section 252(b) of the Telecommunications Act of 1996, Order of Dismissal, Case No. PUC-2007-00112, at 2-3 (Feb., 14, 2008).*

After the Virginia Commission dismissed Intrado's petition against Embarq, Intrado asked the FCC to preempt the Virginia Commission's jurisdiction, so that its Wireline Bureau may arbitrate that petition, including the question of Intrado's rights to interconnection and arbitration under the Act.³

The same considerations raised by the Virginia Commission exist in this case, where Intrado has presented the same threshold issue. As the Virginia Commission explained, the FCC is in the best position to interpret federal law to determine whether Intrado is entitled to interconnection and arbitration. Asking this Commission to resolve the same issue, at the same time, raises the possibility of inconsistency with the FCC Bureau's eventual decision. As the Virginia Commission observed, it would be inappropriate to resolve any of the issues in Intrado's arbitration petition until the threshold issue is resolved. As a purely practical matter, this Commission cannot be expected to undertake this arbitration while there is any uncertainty about whether it should proceed at all—particularly because Intrado has filed one of the largest and most complex petitions for arbitrations this Commission has ever seen. Many of the issues Intrado raises are new to both this Commission and to Verizon; no entity purporting to qualify as a CLEC has ever sought the kinds of arrangements Intrado is seeking from Verizon under the Act. If this Commission proceeds to arbitration before a decision on the threshold issue of whether the arbitration should go forward at all, it risks wasting an enormous amount of time and resources. Therefore, the Commission should hold Intrado's Petition in abeyance until the FCC Wireline Bureau provides guidance as to

³ *Petition of Intrado Comm. of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corp. Commission Regarding arbitration of an Interconnection Agreement with Central Tel. Co. of Virginia and United Tel.-Southeast, Inc.*, FCC WC Docket No. 08-33, filed March 6, 2008.

whether Intrado is entitled to interconnection and arbitration under the Act. Although that Bureau ruling will bind only the Virginia Commission, it will be useful for this Commission to consider in deciding whether to dismiss the Petition or whether to go forward on any or all of the issues Intrado has raised.

B. Arbitration Is Premature Because the Parties Have Not Negotiated Numerous Issues.

As Intrado recites in its Petition, it requested negotiation of an interconnection agreement (“ICA”) on May 18, 2007. Since then, the parties exchanged draft ICAs and negotiated, and in some cases, resolved certain issues. However, it was not until February 13, 2008—just three weeks before filing its Petition and nine months from its negotiation request—that Intrado raised over half of the 41 issues in that Petition (specifically, issues 3, 5, 7, 8, 9, 11, 13, 16, 17, 18, 19, 20, 21, 22, 28, 31, 34, 37, 38, 39 and 40; in addition, Intrado significantly expanded the scope of issues 6, 14, and 15) in a revised draft agreement introducing over 100 new substantive edits. (In contrast, the first redlined draft Intrado sent to Verizon months earlier had 50 edits.) In addition to being newly presented in the parties’ negotiations, many of the issues Intrado raised just before filing its arbitration are wholly new to Verizon. No CLEC or entity claiming that status, in the 12 years since adoption of the Act, has ever requested the kinds of features and arrangements Intrado is requesting of Verizon in an ICA. Therefore, Verizon has never had to develop positions to address such requests, many of which present technical, operational, and legal complexities that Verizon must carefully evaluate in order to respond to Intrado. Adding to the difficulty of assessing Intrado’s

untimely proposals is the fact that many of them are only vaguely delineated and Intrado has offered little or no supporting rationale for them.

Conducting a very large arbitration like this one in a compressed timeframe is difficult under the best of conditions—that is, where the open issues and parties' positions have been clearly defined and narrowed through negotiation. But where the parties have not actually negotiated many of the issues raised in a party's petition—as is the case here—it will be impossible for the Commission to efficiently manage the arbitration process. At this point, Verizon is not even sure the parties disagree on particular issues, because Verizon does not know, in some cases, exactly what Intrado is seeking. In others, Verizon has not had sufficient time to develop a response. It may well be that Verizon can agree to some of Intrado's proposals, or that the parties may be able to reach a compromise on particular issues, but only after a meaningful discussion of those issues.

Even if the Commission decides to proceed to arbitration without waiting for a decision as to whether arbitration is proper, the Commission cannot be expected to waste time and resources trying to figure out what the open issues are, let alone what the parties' positions on those issues are, before trying to arbitrate them. This is not the process prescribed by the Act, which contemplates arbitration of only "open issues" arising from negotiations. Indeed, a party may not file for arbitration until negotiating for at least 135 days (up until 160 days). 47 U.S.C. § 252(b)(1). Requiring negotiations for months before arbitrating was Congress' way of assuring that parties made a genuine effort to clearly define their disputes and attempt to resolve them on their own, before involving state Commissions. In this case, however, the parties have not even finished

defining the open issues, let alone trying to resolve them through meaningful negotiations.

If the Commission declines to wait for a decision on the threshold arbitration issue, the only feasible course is to defer arbitration for a reasonable period to allow the parties to better define and negotiate the open issues. A 60-day abeyance should be sufficient to allow the parties to conduct pre-arbitration negotiations. This additional time for negotiation will not prejudice Intrado. Intrado has already indicated its willingness to continue negotiating with Verizon (Intrado Petition at 16.) If Verizon and Intrado must proceed with a premature arbitration, their resources will have to be directed primarily to that effort, rather than to resolving open issues. This result is not in anyone's best interest. Deferring the start of the arbitration for a brief period now will save time and effort later because the Commission and the parties will be assured of arbitrating only issues that are clearly defined and truly disputed.

If the Commission grants the abeyance and extends the pre-arbitration negotiation period, the Act's nine-month period for the Commission resolution of the open issues (see 47 U.S.C. § 252(b)(4)(C) would be extended accordingly. Verizon would, in any event, agree to waive the nine-month period for decision, if the Commission deems a waiver by the parties appropriate.

* * *

For all these reasons, Verizon asks the Commission to hold Intrado's Petition for Arbitration in abeyance pending a decision on the question of whether Intrado is entitled to arbitration at all. If the Commission declines to wait for this ruling, then Verizon asks

it to hold Intrado's Petition in abeyance for at least 60 days, in order to allow the parties to focus on negotiation of disputed issues.

Respectfully submitted on March 31, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via U. S. mail on
March 31, 2008 to:

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