

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

In the matter of the Petition of Intrado, Inc.)
For Arbitration Pursuant to Section 252(b))
Of the Telecommunications Act of 1996 to) Docket No. 01-0519
Establish an Interconnection Agreement)
With Verizon South Inc, and Verizon)
North Inc.)

RESPONSE TO INTRADO'S MOTION TO STRIKE

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its attorneys, and responds to Petitioner Intrado, Inc.'s Motion to Strike Portions of the Answer and Verified Statement Filed by Verizon South Inc. and Verizon North Inc. ("Motion").

This case is a proceeding brought by Intrado, Inc. ("Intrado") pursuant to Section 252 (b) of the Telecommunications Act of 1996 ("TA 96"). On July 27, 2001, Intrado filed a Petition requesting arbitration of certain issues remaining between Intrado and Verizon South, Inc. and Verizon North, Inc. ("Verizon"). Intrado has also submitted the supporting Verified Statements of Ms. Cynthia A. Klugy and Mr. Ronald W. Mathis. Respondent Verizon has filed an Answer to Intrado's Petition For Arbitration and submitted the Direct Testimony of William H. Green, III. Staff is scheduled to submit Statements setting forth its positions on the matters at issue on September 7, 2001.

On September 4, 2001, Intrado filed its Motion to Strike portions of Verizon's Answer and Mr. Green's Direct Testimony. There are two separate aspects to the Motion that Staff wished to address. First, Intrado founds its Motion, in part, on the basis that some of the positions taken by Verizon are colored by Verizon's denial of Intrado's qualifications as a telecommunications carrier. Second, Intrado requests the

Administrative Law Judge strike additional material as being beyond the scope of issues permitted in this arbitration proceeding. These are important issues that have implications beyond this docket, and in the case of Intrado's second argument, in all arbitration proceedings heard by the Commission. Thus, although Intrado's Motion is not directed to any Staff filing or submission, Staff believes it is important to speak to the import of Intrado's arguments.

Intrado's Status As A Telecommunications Carrier

This Commission certified Intrado (then known as SCC Communications Corporation) as a telecommunications carrier on December 20, 2000, in Docket No. 00-0606. Moreover, as noted by Intrado in its Motion (Par. 3 at page 4, footnote 9 at page 7), the Commission later rejected arguments by Ameritech Illinois in Docket No. 01-0308 that Intrado (SCC) was not a telecommunications carrier. Thus, Staff believes that Intrado's status as a telecommunications carrier is an inappropriate basis on which to support the denial of any interconnection provisions. To the extent that the argument that Intrado is not a telecommunications carrier effects Verizon's positions in this Docket, Staff believes that is inappropriate.

Scope Of Issues

Intrado argues that various materials should be stricken as being beyond the proper scope of this arbitration proceeding. (Motion at page 3, Par. 3.) Intrado contends that the parties' positions on issues are set at the time of an arbitration Petitioner's filing pursuant to 83 Ill. Admin. Code 761.110(b) ("Part 761"). Intrado apparently believes that any other representations of positions are inappropriate for

consideration by the Commission. The Staff strongly disagrees with this interpretation of Part 761.

Part 761.110 b) provides:

The party petitioning the Commission shall, at the time as it submits the petition, provide the Commission all relevant documentation concerning:

- 1) The unresolved issues:
- 2) The position of each of the parties with respect to those issues; and
- 3) Any other issue discussed and resolved by the parties.

This provision evidences no intent to 'freeze' either the issues or the state of the documentation regarding those issues. To permit Intrado's interpretation would be to confer solely upon the Petitioner the power of determining how issues will be presented to the Commission. Clearly, the parties must disagree on the issues (or, again, they would not be participating in an Arbitration proceeding). To permit the Petitioner to be the sole determinant of what is presented to the Commission is patently unfair to the Respondent. Moreover, Staff believes such an interpretation would work a hardship on the Commission, as the Commission would not have a full and complete exposition of the issues upon which to make its judgments.

Intrado's argument is thus also contrary to Part 761.120 d) which permits Respondents to file responses petitions for arbitration, as well as verified written statements and exhibits which support Respondent's positions on unresolved issues. No limitation of the nature proposed by Intrado is imposed by this provision.

Moreover, Intrado's argument is contrary to Section 252 (b) (3) of TA 96.

OPPORTUNITY TO RESPOND- A non-petitioning party to a negotiation under this section may respond to the other party's petition *and provide such additional*

information as it wishes within 25 days after the State commission receives the petition. (Emphasis supplied.)

Intrado's position works an unwarranted limitation on a Respondent's ability under federal law to "*provide such additional information as it wishes.*" The Commission's rules should not be read to conflict with the statutory requirements.

Additionally, Intrado's position, if adopted, could reach back and have a chilling effect on the extent to which parties participate in negotiations prior to arbitration, and during the arbitration proceeding. Parties should be encouraged to resolve interconnection issues between themselves, rather than simply rely on the Commission to arbitrate. Moreover, the parties should be encouraged to continue to explore issue resolution throughout the arbitration process. And, even if any changes in positions do not ultimately result in a negotiated settlement, they would clearly be appropriate for the Commission's arbitration consideration. It would be poor policy – and lead to inappropriate decisions – not to permit a party to offer for the record any timely and reasonable changes to its positions. However, Intrado's notion of 'freezing' issues would frustrate any such continued efforts at negotiation; arbitration would be the sole avenue for resolution. Intrado's argument should be denied.

Respectfully submitted,

/s/
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