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CHÉRIE R. KISER | 202-862-8950 | ckiser@cgrdc.com

April 15, 2009

**Via Electronic Mail and Federal Express**

Catrice C. Williams  
Secretary  
Department of Telecommunications and Cable  
Two South Station  
Fourth Floor  
Boston, Massachusetts 02110

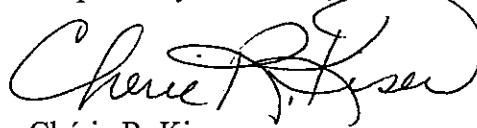
**Re: D.T.C. 08-9, Petition for Arbitration of an Interconnection Agreement  
between Intrado Communications Inc. and Verizon New England Inc. d/b/a  
Verizon Massachusetts**

Dear Secretary Williams:

Intrado Communications Inc. ("Intrado Comm"), hereby respectfully submits the enclosed response to Verizon's *Notice of Recent Decision* filed April 14, 2009.

If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Chérie R. Kiser

Counsel for Intrado Communications Inc.

Enclosures

cc: Service List

**Before the  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

|                                           |   |             |
|-------------------------------------------|---|-------------|
| 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,   | ) | D.T.C. 08-9 |
| to Establish an Interconnection Agreement | ) |             |
| with Verizon New England Inc.             | ) |             |
| d/b/a/ Verizon Massachusetts              | ) |             |
|                                           | ) |             |

**INTRADO COMMUNICATIONS INC. MOTION TO STRIKE  
VERIZON'S "NOTICE OF RECENT DECISION"**

Intrado Communications Inc. ("Intrado Comm"), by its attorneys, respectfully submits this Motion to Strike Verizon's "Notice of Recent Decision" filed April 14, 2009, as a poorly disguised, improperly filed, untimely supplement to its Motion for Abeyance filed in the above-referenced matter on March 10, 2009.

While Intrado Comm fully recognizes the authority of the Department of Telecommunications and Cable ("Department") to take administrative notice of rulings from other jurisdictions,<sup>1</sup> this rule does not entitle Verizon to file out of time pleadings. Verizon has not simply asked the Department to take notice of an unrelated decision. Instead, it has abused the process by submitting a three page argument that, once again, urges the Department to hold

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<sup>1</sup> *New England Tel. & Tel. Co.*, 2000 WL 943764, \*1 (Mass. Dept. Tel. Energy 2000) ("The Hearing Officer also took administrative notice of an Order Granting in Part and Denying in Part Petition for Reconsideration of the State of New York Public Service Commission dated December 23, 1998"); *WorldCom Technologies, Inc.*, 189 P.U.R.4th 230, \*2, n.6 (Mass. Dept. Tel. Energy 1998), *opinion vacated on denial of reconsideration*, *MCI WorldCom, Inc. v. New England Tel. & Tel. Co.*, 1999 WL 634357 (Mass.D.T.E. 1999) ("the Department is obligated to take administrative notice of relevant legal precedent from other jurisdictions").

this proceeding in abeyance pending a ruling in the Intrado Comm/Verizon Virginia arbitration proceeding now pending before the Wireline Competition Bureau (“Bureau”) of the Federal Communications Commission (“FCC”).<sup>2</sup> The Department should send a strong message in response to Verizon’s abuse of process and strike its “Notice of Recent Decision” pleading from this record.

Intrado Comm has no objection to the Department taking administrative notice of the Scheduling Notice to which Verizon refers.<sup>3</sup> Intrado Comm does object, however, to Verizon’s transparent attempt to use this “Notice of Recent Decision” in effect to file an untimely supplemental brief on the merits.

### **CONCLUSION**

As set forth in Intrado Comm’s Opposition to Verizon’s Motion for Abeyance (filed timely on March 18, 2009 and attached hereto), Verizon has presented no compelling reason for the Department to hold this arbitration proceeding in abeyance. Accordingly, Intrado Comm

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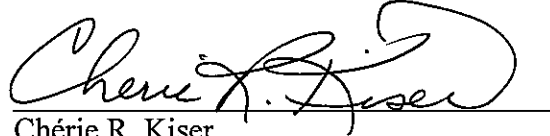
<sup>2</sup> Motion of Recent Decision at 3.

<sup>3</sup> *The Matter of the petition of Intrado Communications Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Maryland Inc. Pursuant to the Federal Telecommunications Act*, (Case No. 9138, Md. P.S.C.). (“Scheduling Notice”).

respectfully urges the Department to proceed consistent with its Revised Schedule issued April 14, 2009, and to strike Verizon's latest pleading from the record.

Respectfully submitted,

**INTRADO COMMUNICATIONS INC.**

A handwritten signature in black ink, appearing to read "Cherie R. Kiser", is written over a horizontal line.

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Its Attorneys

Dated: April 15, 2009

## CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of INTRADO COMMUNICATIONS INC. MOTION TO STRIKE VERIZON'S "NOTICE OF RECENT DECISION" was filed with the Secretary of the Massachusetts Department of Cable and Telecommunications via electronic filing and Federal Express and that a copy was served on the following individuals via electronic mail and Federal Express on this 15th day of April, 2009:

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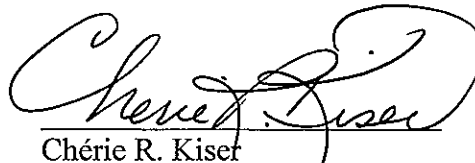
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Cherie R. Kiser

**Before the  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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 Verizon New England Inc.  
d/b/a/ Verizon Massachusetts

D.T.C. 08-9

**INTRADO COMMUNICATIONS INC. OPPOSITION TO  
VERIZON'S MOTION FOR ABEYANCE**

Intrado Communications Inc. ("Intrado Comm"), by its attorneys, respectfully submits this Opposition to Verizon's Motion for Abeyance ("Motion") filed in the above-referenced matter on March 10, 2009. Verizon urges the Department of Telecommunications and Cable ("Department") to hold this proceeding in abeyance pending a ruling in the Intrado Comm/Verizon Virginia arbitration proceeding now pending before the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("FCC").<sup>1</sup> Verizon has presented no compelling reason for the Department to hold this arbitration proceeding in abeyance. Accordingly, Verizon's Motion should be denied.

Verizon is wrong when it claims that the issues in the Virginia arbitration proceeding before the Bureau are "nearly identical" to the issues in this case and will "provide useful guidance" to the Department.<sup>2</sup> While it is true that many of the substantive interconnection issues in both the Massachusetts proceeding and the Intrado Comm/Verizon Virginia arbitration

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<sup>1</sup> The "target" date for an initial decision in the Intrado Comm/Verizon Virginia arbitration proceeding is May 2, 2009.

<sup>2</sup> Verizon Motion at 1.

before the Bureau are the same,<sup>3</sup> there is one very important difference. The issue of whether Intrado Comm is entitled to Section 251(c) interconnection for the competitive provision of 911/E-911 services to public safety answering points (“PSAPs”) and other public safety agencies is not an issue in the instant arbitration proceeding before the Department as the record here demonstrates.<sup>4</sup> In fact, the issue was not originally present in Intrado Comm’s arbitration proceeding with Verizon before the Bureau because neither Intrado Comm nor Verizon designated it as an issue for arbitration.<sup>5</sup> The issue is now included in Intrado Comm’s arbitration with Verizon Virginia only by virtue of the Bureau’s decision to consolidate the Intrado Comm/Verizon and Intrado Comm/Embarq Virginia arbitrations.

The ruling expected from the Bureau in early May concerns only the so-called “threshold issue,” not any substantive interconnection provisions between the Parties as Verizon itself admits.<sup>6</sup> Thus, the pending Bureau proceeding provides no basis for the Department to hold the instant arbitration proceeding in abeyance. Nor would there be any reason for either Party to ask the Department to “modify its decision” based on the Bureau’s May ruling<sup>7</sup> given that the issue to be decided by the Bureau is not before the Department in this arbitration proceeding.

Abeyance is appropriate when it would be an “inefficient use of the Department’s and parties’

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<sup>3</sup> Issues such as the location of the point of interconnection, the use of direct dedicated trunking for routing 911/E-911 calls, and the implementation of inter-selective router trunking are found in both proceedings.

<sup>4</sup> See, e.g., Intrado Comm Hearing Exhibit 2, Direct Testimony of Robert C. Currier, ENP on behalf of Intrado Communications Inc. at 9, lines 12-17 (filed Dec. 29, 2008) (“Currier”); Transcript at 64-66; Intrado Comm Brief at n.14; Intrado Comm Reply Brief at 4-6. The Department’s jurisdiction to arbitrate is specifically limited to the issues raised by the petitioner (*i.e.*, Intrado Comm) and any additional issues identified by the respondent (*i.e.*, Verizon). See 47 U.S.C. § 252(b)(4)(A). Verizon did not raise any additional issues in its December 2008 response to Intrado Comm’s petition for arbitration.

<sup>5</sup> See Intrado Comm Initial Brief at Attachment 33, Intrado Communications Inc. Reply to Verizon Response at 9-10.

<sup>6</sup> Verizon Motion at 1.

<sup>7</sup> Verizon Motion at 2.

resources” to move forward with the proceeding.<sup>8</sup> That is not the case here because the pending decision from the Bureau does not change the Department’s evaluation of the record or the Parties’ legal arguments with respect to the issues presented for arbitration.

Verizon’s reliance on the Parties’ decision to hold their North Carolina and Delaware proceedings in abeyance is also misplaced.<sup>9</sup> Verizon fails to note that, at the time the Parties decided to hold those proceedings in abeyance, no hearings had been held and no legal briefs had been filed.<sup>10</sup> Nor had either state commission set a specific deadline for action on the arbitration proceeding. Here, however, the Parties have held their evidentiary hearing and filed their legal briefs, and the Department has established a definitive date for action on the arbitration. The Parties’ actions in the North Carolina and Delaware proceedings were therefore based on an entirely different procedural posture than the instant proceeding.

Finally, abeyance of this proceeding would significantly affect Intrado Comm’s ability to provide competitive 911/E-911 services in Massachusetts. As the record demonstrates, interconnection with Verizon pursuant to Section 251 is necessary for Intrado Comm to offer its services because all consumers making 911 calls are connected to the public switched telephone network (“PSTN”), predominantly through incumbent carriers like Verizon.<sup>11</sup> In order for those 911 callers to reach Intrado Comm’s public safety customers, Intrado Comm must be interconnected with Verizon. The Massachusetts State 911 Department is currently seeking

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<sup>8</sup> D.T.E. 03-60, *Proceeding by the Department of Telecommunications and Energy on Its Own Motion to Implement the Requirements of the Federal Communications Commission’s Triennial Review Order Regarding Switching for Mass Market Customers*, Interlocutory Order on Motion to Stay of Verizon New England, Inc. d/b/a Verizon Massachusetts (Apr. 2, 2004).

<sup>9</sup> Verizon Motion at 2.

<sup>10</sup> In Delaware, the Parties agreed to waive the evidentiary hearing.

<sup>11</sup> Currier at 8, lines 6-22; Intrado Comm Hearing Exhibit 1, Direct Testimony of Thomas W. Hicks on behalf of Intrado Communications Inc. at 8, lines 6-23 (filed Dec. 29, 2008).

responses to a Request for Response ("RFR") for replacement of the entire statewide 911 network, database, and support. Interconnection with Verizon is essential to Intrado Comm's and other competitors' ability to respond to the RFR and to effectively compete in the market.

### CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Department reject Verizon's Motion and move forward with its April 10 decision in this arbitration proceeding.

Respectfully submitted,

**INTRADO COMMUNICATIONS INC.**



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Dated: March 18, 2009

Its Attorneys