

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Intrado Communications, Inc. 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.

DOCKET NO. 070736-TP
ORDER NO. PSC-08-0798-FOF-TP
ISSUED: December 3, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

FINAL ORDER

BY THE COMMISSION:

I. Case Background:

On December 21, 2007, Intrado Communications, Inc. (Intrado Comm) filed a Petition for Arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T), pursuant to Section 252(b) of the Communications Act of 1934, as amended¹ (Act), and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, Florida Statutes (F.S.), and Rule 28-106.201, Florida Administrative Code (F.A.C.). An evidentiary hearing was held on July 10, 2008.

We are vested with jurisdiction over this subject matter by the provisions of Chapters 364 and 120, F.S.

¹ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151, et seq. (1996)).

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II. Analysis:

A. Intrado Comm service offering

We examine Intrado Comm's service offering, which involves the provision of 911/E911 service to Public Safety Answering Points (PSAPs)² and government entities. An important consideration is whether Intrado Comm's service offering meets the definition of a "telephone exchange service," as the term is defined in §3 of the Act.

SEC. 3. [47 U.S.C. 153] DEFINITIONS.

(47) TELEPHONE EXCHANGE SERVICE.--The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Intrado Comm believes its "Intelligent Emergency Network"TM service meets this definition. AT&T disagrees with Intrado Comm's assertion. This determination is key to whether AT&T (as an incumbent local exchange carrier) must enter into an interconnection agreement with Intrado Comm pursuant to the obligations set forth in §251(a) or in §251(c) of the Act. Further arguments are summarized below.

Parties' Arguments

Intrado Comm contends that when it provides its end-to-end 911/E911 service offering to Florida public safety agencies, Intrado Comm provides telephone exchange service. AT&T contends that this service does not constitute telephone exchange service or exchange access service. AT&T asserts that Intrado Comm is offering a service that does not serve the end users who place 911/E911 calls, but rather aggregates the 911/E911 traffic from end users of other carriers to deliver to Intrado Comm's customer, which is a PSAP. The parties agree that Intrado Comm will be offering alternative 911/E911 service to Florida counties, public safety agencies and PSAPs, but they disagree whether the service should be classified as a telephone exchange service.

Intrado Comm witness Hicks³ admits that its service is not exchange access service but states that Intrado Comm will provide telephone exchange service to PSAPs. The FCC has stated that exchange access service involves traffic originated in one exchange that terminates in

² For purposes of the "911" system, §365.172, F.S., defines an "[a]nswering point" to mean "the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls."

³ Intrado Comm witness Thomas Hicks adopted the pre-filed testimony of Carey Spence-Lenss, who was unable to attend the hearing.

another exchange.⁴ Therefore, AT&T argues that because Intrado Comm has admitted that it will not offer exchange access, the only remaining issue is whether Intrado Comm will offer telephone exchange service. Intrado Comm witness Hicks testified that:

251 telephone exchange traffic is predicated on the fact that facsimile lines are basically one-way lines . . . that have been considered to be telephone exchange service . . . basically the services that Intrado [Comm] intends to provide provides two-way voice communications.

AT&T asserts that because the service that Intrado Comm intends to provide to PSAPs cannot be used to originate calls, this service does not qualify as telephone exchange service.

Intrado Comm asserts that the FCC determined that "telephone exchange service [is] not limited to traditional voice telephony, but include[s] non-traditional means of communicating information within a local area."⁵ Intrado Comm notes that the FCC has also stated that "a key component of telephone exchange service is 'intercommunication' among subscribers within a local exchange area."⁶ Intrado Comm argues that its service fulfills the FCC stated component of intercommunication because it allows 911/E911 users to be connected with PSAPs and communicate with local emergency personnel. Furthermore, Intrado Comm points out that AT&T's own tariff refers to its 911/E911 service as a telephone exchange service.⁷

AT&T contends that to qualify as a telephone exchange service, the service must be within an exchange boundary and capable of both originating and terminating intraexchange calls. AT&T argues that the service Intrado Comm intends to provide PSAPs does neither. AT&T states that Intrado Comm's own tariff filing indicates that it "is not responsible for the provision of local exchange service to its Customers." AT&T believes this is significant because Intrado Comm asserts that it does not intend to replace all of a PSAP's local exchange services, acknowledging that a PSAP or a Florida county may subscribe to additional local exchange service for placing administrative calls. An administrative call is made from an administrative line that is connected to the PSAP system, which can call out to the public switched telephone network.

Intrado Comm further argues that it is requesting an interconnection agreement from AT&T for the mutual exchange of traffic. Intrado Comm contends that while 911/E911 trunks are generally one-way trunks, a "mutual exchange of traffic" need not occur over the same trunk.

⁴ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) (Order on Remand) ¶35.

⁵ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 17 (1999) ("Advanced Services Order").

⁶ Advanced Services Order ¶ 30.

⁷ The AT&T tariff states that "911 service is a telephone exchange communication service whereby a PSAP designed by the customer may receive telephone calls to the telephone number 911 . . . [and] includes lines and equipment necessary for the answering, transferring and dispatching of public emergency telephone calls originated by persons within the serving area who dial 911."

Intrado Comm asserts that this exchange may be “properly reflected by traffic flows of originating and terminating traffic” through trunking configurations. Intrado Comm believes the FCC has lent credence to its argument. Specifically, Intrado Comm cites the FCC’s finding that established “intercommunication” as a hallmark for telephone exchange service. In doing so, Intrado Comm argues that the FCC recognized that without interconnection between an ILEC and an entrant, a customer would not be able to complete calls. Intrado Comm further argues that the FCC found that an ILEC has little incentive to aid new entrants’ entry into the marketplace, which is a matter Congress addressed in §251(c). Intrado Comm notes that AT&T witness Pellerin stated that a competitor must be interconnected with the Public Switched Telephone Network in order to provide 911/E911 service, which offers further support that Intrado Comm provisions telephone exchange service because entrants must be allowed to effectively compete.

Intrado Comm witness Hicks states that the “services that the PSAP uses would only be able to generate and originate a call transfer. They would not be able to utilize Intrado Comm’s offering to generate a traditional local call.” AT&T argues that Intrado Comm witness Hicks admits that Intrado Comm’s service cannot be used to originate a call. AT&T states that Intrado Comm’s inability to call back to a disconnected 911/E911 caller indicates that the 911/E911 service cannot be used to originate a call, and therefore does not meet the definition of telephone exchange service.

Analysis

The term “service” is central to this case. Both parties acknowledge that Intrado Comm offers a service, but differ as to what type of service is being offered. Establishing the nature of the service Intrado Comm is offering is important to determine whether Intrado Comm and AT&T should enter into an arrangement under §251(a), a general contract, or §251(c), an interconnection agreement. Section 251(c) specifically provides for an interconnection agreement between a competitive local exchange carrier and an incumbent local exchange carrier, whereas §251(a) allows for a general contract, commonly referred to as a commercial agreement. Section 251(c) imposes specific, asymmetric obligations on ILECs. Section 252 gives rise to an interconnection agreement incorporating the §251(c) obligations.

911/E911 Service

Section 365.172(3)(i), F.S., defines E911 service as the “enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated.” Both Intrado Comm and AT&T agree that Intrado Comm will provide its services as a competitive 911/E911 provider. Upon Intrado Comm’s entry into the marketplace, PSAPs will have the opportunity to choose an alternate 911/E911 service provider.

Telephone Exchange Service

Intrado Comm’s Intelligent Emergency Network™ is a service that allows a PSAP to receive emergency calls. By identifying its service as “telephone exchange service” because it

“allows Florida consumers to be connected with PSAPs and communication with local emergency personnel,” Intrado Comm attempts to interpret 47 U.S.C. 153(47) to fit its own circumstances. 47 U.S.C. 153(47) defines “telephone exchange service” as one which can *both* originate and terminate calls. However, in the current service offering, Intrado Comm provides a service that cannot be used to originate a call. Intrado Comm witness Hicks states that Intrado Comm both originates and terminates calls from a 911/E911 caller because Intrado Comm can transfer calls from one PSAP to another PSAP. Intrado Comm witness Hicks, however, also admitted that the PSAP would not be able to call out with its service, which means that an outbound call cannot be placed unless a separate administrative local line is used.

We find that in order for a service to be considered a telephone exchange service, pursuant to 47 U.S.C. 153(47), it must provide for both the origination and termination of calls. Without the ability both to originate and terminate calls, Intrado Comm’s proposed services do not meet the definition of “telephone exchange service.” The Intelligent Emergency Network™ does not offer a PSAP the ability to call back a 911/E911 user, and administrative lines not offered by Intrado Comm would be required to place such a call.

B. AT&T’s requirement to offer interconnection under §251(c)

This section focuses on whether AT&T is required to offer interconnection to Intrado Comm under §251(a) or §251(c) of the Act. Section 251(a) of the Act describes the general duty of all telecommunications carriers to interconnect, while §251(c) addresses specific obligations imposed only on incumbent local exchange carriers (ILECs). Two aspects of §251(c) are particularly significant:

- Section 251(c)(2) includes a reference to “telephone exchange service,” and
- Section 251(c)(3) addresses the ILEC’s obligation to provide access to unbundled network elements (UNEs). In essence, this concern is a “rates” issue since AT&T would be obligated to offer these UNEs to Intrado Comm at Total Element Long-Run Incremental Cost (TELRIC) based rates, as opposed to the more general pricing standard applicable to items provided pursuant to §251(a).

Intrado Comm contends that a §251(c) agreement is appropriate since its service offering meets the definition of “telephone exchange service.” It believes AT&T is obligated to offer it cost-based, unbundled access to the elements it wants pursuant to §251(c) of the Act. AT&T disagrees with both assertions.

AT&T believes Intrado Comm’s “Intelligent Emergency Network”™ service is not a “telephone exchange service,” and as such, the consideration of interconnection with Intrado Comm pursuant to §251(c) is moot. AT&T summarily contends that Intrado Comm is not providing “telephone exchange service” subject to any portion of §251(c), and is therefore not entitled to a §251(c) interconnection agreement. AT&T further states that “the proper denial of this request obviates the need to entertain any of the other issues in this proceeding.”

Parties' Arguments

Intrado Comm contends that it cannot offer 911/E911 service in Florida without interconnecting to the Public Switched Telephone Network under §251(c). AT&T disputes this claim, stating that Intrado Comm can purchase wholesale services through commercial agreements negotiated pursuant to §251(a). AT&T argues that Intrado Comm's emergency services are not telephone exchange service or exchange access. AT&T further argues that without telephone exchange service or exchange access offerings, it is not obligated to offer Intrado Comm rates and terms pursuant to §251(c).

Intrado Comm asserts that §251 and §252 were designed to allow competitors to enter the marketplace quickly and §252 specifically addresses interconnection on a level playing field. The benefit Intrado Comm believes §251(c) will provide it is a level playing field, the provision of service at TELRIC rates, and different connection standards that are established by the Act. Intrado Comm argues that it is a competitive local exchange carrier and, as such, is entitled to interconnection with AT&T pursuant to §251(c). AT&T counters that without offering both the origination and termination of calls, Intrado Comm does not offer telephone exchange service. Absent the provision of telephone exchange service, AT&T asserts that Intrado Comm may only negotiate pursuant to §251(a), not §251(c). AT&T further asserts that §251(c)(2)(A) provides that an ILEC has a duty to interconnect "for the transmission and routing of telephone exchange service and exchange access." Intrado Comm contends its right to interconnect pursuant to §251(c) is established because competitors are entitled to interconnect with ILECs.

Intrado Comm asserts that its proposed interconnection arrangements will ensure a level playing field for any alternative 911/E911 service providers. Intrado Comm contends that it is not required to enter into commercial agreements because of §251(c). Intrado Comm explains that a §251(c) interconnection agreement is its right as a CLEC and that leaving agreements to be made under §251(a) would be detrimental to the goals of the Act because it would favor AT&T over any other carrier, including any other providers of competitive 911/E911 service. Upon questioning from AT&T, Intrado Comm witness Hicks acknowledges that Intrado Comm chose to request a §251(c) interconnection agreement and that all of the services it desires could have been obtained through a commercial agreement. AT&T argues that because Intrado Comm's service to PSAPs cannot be used to originate calls, the service does not qualify as telephone exchange service and therefore does not qualify for interconnection pursuant to §251(c).

Analysis

Section 251 establishes the interconnection rights and obligations of telecommunications carriers, including local exchange telecommunications carriers. More specifically, §251(a) imposes a general obligation on all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(c) goes beyond the general obligation and imposes specific obligations on incumbent local exchange carriers (like AT&T) to allow interconnection by competing carriers on the incumbent's network.

If Intrado Comm becomes the 911/E911 service provider to PSAPs, AT&T becomes the carrier requesting interconnection on Intrado Comm's network in order to provide access to 911/E911 to AT&T's end user customers. AT&T believes the requirements imposed on ILECs do not support the type of interconnection arrangements currently requested by Intrado Comm. AT&T would be in a situation where it would be both the ILEC providing interconnection and a carrier seeking access. This situation could present a serious disadvantage to AT&T, who would pay for Intrado Comm establishing its 911/E911 service. We are concerned that the costs for interconnection would be borne by AT&T. AT&T witness Pellerin expressed concern as well.

Intrado Comm seeks a §251(c) interconnection agreement with AT&T to gain access to the Public Switched Telephone Network to offer its competitive services to PSAPs throughout the State of Florida. However, we find that the service Intrado Comm intends to provide is not one that will both originate and terminate calls. We find that §251(c) applies when a telecommunications carrier requests interconnection with an ILEC such as AT&T to offer telephone exchange service and exchange access. However, §251(c) does not apply or impose specific obligations on an ILEC when the ILEC seeks interconnection on the CLEC's network. In its brief, Intrado Comm states that §251(c) plays a critical role in allowing it a "fair opportunity to compete in the Florida marketplace." Intrado Comm asserts that §251(c) provides it the ability to "obtain the interconnection and interoperability arrangements it needs to provide its 911/E911 service to Florida counties and PSAPs while, at the same time, promoting the reliability and redundancy critical to public safety."

Because Intrado Comm does not offer telephone exchange service, AT&T is not obligated to interconnect with Intrado Comm pursuant to §251(c). In addition, Intrado Comm has the ability to offer the services it wants without a §251(c) interconnection agreement through the use of a commercial agreement or AT&T's tariffs. Therefore, AT&T is not required to offer interconnection pursuant to §251(c).

Finally, we have arbitrated issues outside of §251(c) when both parties agreed to Commission action. To date, we have not reviewed any interconnection arrangements pursuant solely to §251(a).⁸

⁸ Recently, a similar issue was addressed by the Virginia State Corporation Commission (Virginia Commission), which deferred Intrado Comm's petition for arbitration to the FCC, stating the FCC should first decide whether Intrado Comm is entitled to §251(c) interconnection. *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). As a result, Intrado Comm petitioned the FCC for resolution of the issues. *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. The FCC granted Intrado Comm's petition, preempting the jurisdiction of the Virginia Commission in a Memorandum Order and Opinion, issued October 16, 2008, *In the matter of Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.*, FCC WC Docket 08-185, stating that the Virginia Commission explicitly deferred action to the FCC.

C. Public Interest Considerations

With the emergence of a competitive 911/E911 provider in the Florida marketplace, there may be potential unintended consequences that affect more than just the current parties to this docket, impacting all carriers in Florida, including wireless and VoIP providers. Most carriers are directed by statute to provide their end users access to 911/E911 service. These carriers may incur higher costs to access 911/E911 service or be forced to rehome circuits,⁹ if a competitive provider's selective router is located outside of Florida. Intrado Comm currently has no selective routers in Florida, although it will eventually deploy a minimum of two selective routers within the state. We are concerned that carriers could potentially be transporting 911/E911 emergency calls up and down the state or perhaps even out of state. Intrado Comm witness Hicks states that it would be up to the connecting party to determine which points on Intrado Comm's network would be the most efficient for connection. The witness points out that AT&T currently has one selective router in each of the 10 LATAs AT&T serves in Florida.

Commission involvement in the provisioning of 911/E911 service is important because of the potential impact on the health and safety of Florida citizens. We note that 911/E911 service is an essential service in Florida. Pursuant to §364.01(4)(a), F.S., we are entrusted with protecting the public health, safety and welfare and must ensure access to basic local service, which includes access to 911/E911 service. It is imperative that access to 911/E911 service continue uninterrupted regardless of the 911/E911 service provider. We are further supported by the FCC which has acknowledged the importance of a state's role in 911/E911 matters.¹⁰

We find that this Commission is not the only agency or entity with an interest in monitoring of 911/E911 service. Intrado Comm witness Melcher acknowledges that 911/E911 service impacts many entities, stating that "[p]ublic safety deserves state of the art solutions and they should be able to pick and choose providers that offer products and services that best fit the needs and the budgets of those public safety communications professionals." At the hearing in Docket No. 070699-TP, this witness stated that:

Public safety is the customer. It's the public safety leaders that should be involved in the decision-making process. And what is so sad to me is that as these kinds of hearings are going on around the country today, the person not sitting at the table that needs to be represented is the public safety leader. They have to be provided choices, they have to be given options that they've not been given in the past.

AT&T witness Pellerin also acknowledged the multi-faceted nature of 911/E911 service, stating that:

⁹ Rehoming is when there is a major network change which involves moving customer services from one switching center to another and establishing the necessary trunking facilities to do so. Harry Newton, Newton's Telecom Dictionary, 19th ed. 2003.

¹⁰ The Wireless Telecommunications and Public Safety Act of 1999 mandates that the Federal Communications Commission "shall encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 911 service."

[i]t is essential that the requesting PSAPs participate in negotiating an arrangement that meets their specific and unique needs; otherwise, 911 call transfers may not work the way they intended or expected, possibly resulting in loss of life. . . . It's important that the PSAPs have a bona fide need to transfer calls between them and that their need is met by including them in the arrangement to provide that service, and that is not in a two-party Section 251(c) interconnection agreement between an ILEC such as AT&T and a CLEC such as Intrado [Comm].

Sections 365.171-175, F.S., address Florida's 911/E911 plan. Any changes involving 911/E911 require the facilitation and cooperation of all affected agencies and entities to resolve any changes or complications that affect 911/E911 in Florida. Decisions affecting the provision of 911/E911 service in Florida are made by several different agencies, including the Department of Management Services, local and state officials, providers and PSAPs. Accordingly, any discussion regarding the provisioning of competitive 911/E911 service in Florida requires that all potentially affected parties be consulted and afforded an opportunity to weigh in on these vital matters.

III. Decision:

We find that Intrado Comm currently provides or intends to provide 911/E911 service to Public Safety Answering Points in Florida. This service does not meet the definition of "telephone exchange service" pursuant to 47 U.S.C. 153(47) because the service will not provide the ability both to originate and terminate calls.

We also find that Intrado Comm's 911/E911 service does not meet the definition of "telephone exchange service," pursuant to the provisions set forth in §251(c). We also find that AT&T is not required to provide interconnection pursuant to the provisions set forth in §251(c). Because any resulting agreement between the parties will not be pursuant to §251(c), we need not address the remaining 22 issues identified in the Prehearing Order, Order No. PSC-08-0400-PHO-TP.

This docket shall be closed and the parties may negotiate a commercial agreement pursuant to §251(a). We are aware of several public policy matters that may warrant examination with the emergence of competitive 911/E911 providers. As such, we direct our staff to further explore these matters.

Based on the foregoing, it is

ORDERED by Florida Public Service Commission that Intrado Communications, Inc. currently provides or intends to provide 911/E911 service to Public Safety Answering Points in Florida. It is further

ORDERED that Intrado Communications, Inc.'s service does not meet the definition of "telephone exchange service" pursuant to 47 U.S.C. 153(47) because it will not provide the ability both to originate and terminate calls. It is further

ORDERED that BellSouth Telecommunications, Inc. d/b/a AT&T Florida is not required to provide interconnection pursuant to the provisions set forth in §251(c) and the parties may negotiate a commercial agreement. It is further

ORDERED that the remaining 22 issues identified in the Prehearing Order, Order No. PSC-08-0400-PHO-TP, need not be addressed. It is further

ORDERED that our staff shall further explore public policy matters that may warrant examination with the emergence of competitive 911/E911 providers. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 3rd day of December, 2008.



ANN COLE
Commission Clerk

(S E A L)

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.