

Exhibit No. ___ (SP-3)
Docket UT-140597
Witness: Susie Paul

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**QWEST CORPORATION d/b/a
CENTURYLINK QC,**

Respondent.

DOCKET UT-140597

**EXHIBIT TO
TESTIMONY OF**

SUSIE PAUL

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

FCC Consent Decree - Intrado

October 13, 2015

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)

Intrado Communications Inc.)

) File No.: EB-SED-14-00017191

) Acct. No.: 201532100005

) FRN: 0005056759

ORDER

Adopted: April 6, 2015

Released: April 6, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau and Intrado Communications Inc. (Intrado Communications) have entered into a Consent Decree to resolve the Bureau's investigation into an April 2014 six-hour outage in 911 service. During this outage, over one million people in Florida, South Carolina, and Pennsylvania were unable to make calls to 911. Pursuant to the Commission's rules, Intrado Communications was required to timely notify all affected Public Safety Answering Points (PSAPs) of the April 2014 outage, but Intrado Communications failed to do so. To settle this matter, Intrado Communications will implement a far-reaching compliance plan to develop and implement proactive risk management principles designed to reduce the likelihood and impact of 911 failures, ensure reliable 911 call completion, and plan for and provide expeditious notification to PSAPs affected by 911 outages. The compliance plan recognizes the challenges to 911 service as networks transition from traditional architectures to next generation IP-supported networks and is a significant step towards ensuring the reliability of the nation's 911 systems. In addition, Intrado Communications will pay a fine of \$1.4 million.

2. The outage began just before midnight Pacific Daylight Time on April 9, 2014, and affected 83 PSAPs, including five PSAPs in Florida, South Carolina, and Pennsylvania that relied on Intrado Communications for 911 routing service. It was a classic "sunny day" outage—one that did not result from an extraordinary disaster or other unforeseeable catastrophe.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigations regarding Intrado Communications' compliance with the Commission's rules.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Intrado Communications possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,¹ and the authority delegated by Sections 0.111 and 0.311 of the Commission's rules,² the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 154(i).

² 47 C.F.R §§ 0.111, 0.311.

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7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Steve Augustino, counsel to Intrado Communications Inc., Kelley Drye & Warren LLP, Washington Harbour, Suite 400, 3050 K Street, NW, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

Federal Communications Commission

service reliability and outage notification for NG911 network facilities and processes under Intrado Communications' direct control.

- (i) "Effective Date" means the date by which both the Bureau and Intrado Communications have signed the Consent Decree.
- (j) "Investigation" means the investigation commenced by the Bureau in EB-SED-14-00017191 regarding whether Intrado Communications and its regulated affiliates violated the Commission's rules regarding 911 service reliability and outage notification.
- (k) "Operating Procedures" means the standard internal operating procedures and compliance policies established by Intrado Communications to implement the Compliance Plan.
- (l) "Parties" means Intrado Communications and the Bureau, each of which is a "Party."
- (m) "PSAP" means a public safety answering point. *See* 47 C.F.R. § 64.3000(c).
- (n) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (o) "Intrado Communications" or "Company" means Intrado Communications Inc. and any successor-in-interest, provided that Intrado Communications will notify the Bureau in the event that any Intrado Communications affiliate commences providing Next Generation 911 (NG911) services of the type described in this Consent Decree, and, upon such notification, such entity shall be added to the definition of "Intrado Communications" or "Company" for purposes of this Consent Decree.

II. BACKGROUND

3. Pursuant to Section 4.9(f)(4) of the Rules, a wireline communications provider that experiences a network outage of at least 30 minutes duration that potentially affects a 911 special facility (as defined by paragraph (e) of Section 4.5 of the Rules) must notify, as soon as possible by telephone or electronic means, any official who has been designated by the management of the affected 911 special facility as the provider's contact person for communications outages at that facility.² The provider must convey to that person all available information that may be useful to the management of the affected 911 special facility in mitigating the effects of the outage on public efforts to communicate with that facility.³ Section 64.3001 of the Rules states that "[a]ll telecommunications carriers shall transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 64.3002."

4. The April 2014 Outage lasted for six hours, during which time PSAPs served by Intrado Communications in Florida, South Carolina, and Pennsylvania were unable to receive 911 calls. Intrado Communications did not timely notify all affected PSAPs of the April 2014 outage. Intrado Communications fully acknowledges that it is responsible for complying with applicable Commission rules regardless of any alleged failures by its subcontractors or affiliates.⁴

² 47 C.F.R. § 4.9(f)(4).

³ *Id.*

⁴ 47 U.S.C. § 217. *See also Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (1984) ("the Commission has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors result in violations"); *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002).

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III. TERMS OF AGREEMENT

5. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order without change, addition, deletion, or modification.
6. **Jurisdiction.** Intrado Communications agrees that the Commission, acting through the Bureau, has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.
7. **Effective Date.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.
8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Intrado Communications agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding, formal or informal, or take any action against Intrado Communications concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any proceeding, formal or informal, or take any action against Intrado Communications with respect to their basic qualifications, including their character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.
9. **Admissions.** Intrado Communications admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that Section 4.9(f)(4) of the Rules required timely notification to PSAPs of the April 2014 Outage. Intrado Communications further admits that it did not provide timely notice to affected PSAPs of the April 2014 Outage.
10. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Intrado Communications shall designate a vice president with the requisite corporate and organizational authority, including budgetary authority for 911 operations, to serve as a Compliance Officer and to discharge the duties set forth below himself/herself, or through appropriate delegation of such duties to the executive director responsible for Intrado Communications' 911 operations. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Intrado Communications complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Commission's rules regarding 911 service reliability and outage notification:
11. **Compliance Plan.** For purposes of settling the matters set forth herein, Intrado Communications agrees that it shall, within the dates set out below, develop and implement a Compliance Plan designed to ensure future compliance with the Commission's rules regarding 911 service reliability and outage notification and with the terms and conditions of this Consent Decree. Intrado Communications will implement, at a minimum, the following procedures:
- (a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, Intrado Communications shall establish Operating Procedures that all Covered Employees must follow to help ensure that Intrado Communications complies with the Commission's rules regarding 911 service reliability and outage notification. Intrado Communications' Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Compliance Processes in paragraph 11(b) are met. Intrado Communications shall also develop a Compliance

Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Commission's rules regarding 911 service reliability and outage notification.

- (b) **Compliance Processes.** Within ninety (90) calendar days of the Effective Date:
- i. Intrado Communications shall develop and implement processes in the evolving NG911 environment to (1) *Identify* risks that could result in disruptions to 911 service, (2) *Protect* against such risks, (3) *Detect* future 911 outages, (4) *Respond* to such outages with remedial actions, including notification to affected PSAPs, and (5) *Recover* from such outages on a timely basis in cooperation with any affected subcontractors or affiliates.
 - ii. Intrado Communications shall develop appropriate measures to detect disruptions in 911 service in network facilities under its direct control and, within 90 days, will develop and submit to the Commission a roadmap with specific objectives and timelines for implementing such measures – the roadmap will also include the objective of working with subcontractors or affiliates when necessary to implement measures such as call counts and traffic measurements to bring 911 outages to the timely attention of Intrado Communications' network operations center (NOC) personnel.
 - iii. Intrado Communications shall develop and implement procedures to maintain current contact information for officials designated to receive outage notifications at each PSAP that it serves. Intrado Communications also shall contact each PSAP that it serves to establish in advance and periodically review procedures for outage notifications under the Commission's rules.
 - iv. Intrado Communications shall examine the PSAP notification processes utilized by its affiliates in their existing operations and incorporate the best practices from those processes into its operations.
 - v. With respect to any subcontractors or affiliates on which Intrado Communications relies for the performance of NG911 capabilities and services, Intrado Communications shall establish clear operational roles and responsibilities to improve situational awareness and information sharing and enable it to exercise oversight with respect to those services. In particular, Intrado Communications shall:
 1. Develop and implement contact procedures with a means of contacting the subcontractor or affiliate that are available twenty-four (24) hours per day, seven (7) days per week.
 2. Develop and implement procedures for prompt identification of outages on the subcontractor's or affiliate's network or facility and to ensure timely notification to Intrado Communications of a known outage with available information to facilitate timely notice to affected PSAPs. Such outage detection procedures should include prompt communication between Intrado Communications and its subcontractors or affiliates.
 - vi. Intrado Communications shall review and revise its existing processes for receiving, gathering, analyzing, and reporting information about outages on subcontractor or affiliate networks to ensure that such processes (1) collect information known to its subcontractors or affiliates about the impact of an outage on any PSAPs and (2) enable Intrado Communications to notify contact personnel designated by any affected PSAP with available information that may be useful to the management of the PSAP to mitigate the effects of the outage. Specifically, Intrado Communications shall within 180 days:

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1. Execute written agreements with every subcontractor or affiliate providing 911 capabilities to timely communicate failure alarms and other relevant information regarding 911 outages.
2. Review and revise agreements with subcontractors or affiliates to remove any contractual barriers to sharing with affected PSAPs and emergency authorities information about the scope and impact of a 911 outage.

If Intrado Communications is unable to execute or revise agreements with subcontractors or affiliates as specified above within 180 days, it shall provide the Commission with a written explanation of why such agreements could not be achieved.

- (c) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall set forth the Commission's rules regarding 911 service reliability and outage notification and the Operating Procedures that Covered Employees shall follow to help ensure that Intrado Communications complies with such rules. Intrado Communications shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Intrado Communications shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (d) **Compliance Training Program.** Intrado Communications shall establish and implement a Compliance Training Program on compliance with the Commission's rules regarding 911 service reliability and outage notification and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Intrado Communications' obligation to report any noncompliance with the Commission's rules regarding 911 service reliability and outage notification under paragraph 12 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within sixty (60) calendar days after the date such person becomes a Covered Employee. Intrado Communications shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

12. **Reporting Noncompliance.** Intrado Communications shall report any material noncompliance with the Commission's rules regarding 911 service reliability and outage notification and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of such noncompliance; (ii) the steps that Intrado Communications has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Intrado Communications has taken or will take to prevent the recurrence of any such noncompliance. All reports of material noncompliance shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Jason Koslofsky at Jason.Koslofsky@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

13. **Reporting Requirements.**

- (a) **Compliance Reports.** Intrado Communications shall file compliance reports with the Commission one hundred twenty (120) calendar days after the Effective Date,

twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- i. Each Compliance Report shall include a detailed description of Intrado Communications' efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Commission's rules regarding 911 service reliability and outage notification. At a minimum, each Compliance Report shall address the following:
 - i. Efforts to proactively manage the risk of 911 outages through actions to *Identify, Protect, Detect, Respond, and Recover*, as set forth above.
 - ii. Specific outage detection mechanisms and failure alarms implemented under this Compliance Plan, including an explanation of any other measures implemented or proposed to better detect a 911 outage of similar scope and duration to the April 2014 outage.
 - iii. Proactive planning for PSAP outage notification as set forth above, including any changes or improvements to Intrado Communications' Operating Procedures made as a result of discussions with PSAPs.
 - iv. Summary information regarding any information-sharing agreements with subcontractors or affiliates reviewed or revised as set forth above.
- ii. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Intrado Communications, stating that the Compliance Officer has personal knowledge that Intrado Communications: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of material noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 of this Consent Decree.
- iii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.⁵ The statement shall address, at a minimum, the topics set forth in paragraph 13(a)(i) above.
- iv. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Intrado Communications, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of material noncompliance; (ii) the steps that Intrado Communications has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Intrado Communications has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- v. All Compliance Reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Jason Koslofsky at Jason.Koslofsky@fcc.gov and JoAnn

⁵ 47 C.F.R. § 1.16.

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Lucanik at JoAnn.Lucanik@fcc.gov. A copy of each Compliance Report shall also be submitted electronically to Jeffery Goldthorp, Associate Bureau Chief for Cybersecurity and Communications Reliability, Public Safety and Homeland Security Bureau at Jeffery.Goldthorp@fcc.gov.

14. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 10 through 13 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

15. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act⁶ against Intrado Communications or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Intrado Communications with the Communications Laws.

16. **Fine.** For purposes of settling the matters set forth herein, Intrado Communications will pay a fine to the United States Treasury in the amount of one million and four hundred thousand dollars (\$1,400,000) within thirty (30) calendar days of the Effective Date. Intrado Communications shall send electronic notification of payment to Jason Koslofsky at Jason.Koslofsky@fcc.gov; JoAnn Lucanik at JoAnn.Lucanik@fcc.gov; and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. **Waivers.** As of the Effective Date, Intrado Communications waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise

⁶ 47 U.S.C. § 208.

⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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challenge or contest the validity of this Consent Decree and the Adopting Order. Intrado Communications shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Intrado Communications nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Intrado Communications shall waive any statutory right to a trial *de novo*. Intrado Communications hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act⁸ relating to the matters addressed in this Consent Decree.

18. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

19. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Intrado Communications does not expressly consent) that provision will be superseded by such Rule or Order.

21. **Successors and Assigns.** Intrado Communications agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

22. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

23. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

24. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

25. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

⁸ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

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26. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc
Chief
Enforcement Bureau

Date

Craig W. Donaldson
Senior Vice President and Counsel
Intrado Communications Inc.

Date