

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**06-25-13
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June 25, 2013

Agenda ID #12209
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 12-09-008

This is the proposed decision of Administrative Law Judge (ALJ) Tsen. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Tsen at spt@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ MARYAM EBKE for KVC
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

Decision PROPOSED DECISION OF ALJ TSEN (Mailed 6/25/2013)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of West Corporation and
Intrado Communications Inc. (U6579C) for
Authority for West Corporation to Acquire
Indirect Control of Intrado Communications,
Inc.

Application 12-09-008
(Filed September 11, 2012)

**DECISION APPROVING SETTLEMENT AGREEMENT AND ACQUISITION OF
INDIRECT CONTROL BY WEST CORPORATION OF INTRADO
COMMUNICATIONS, INC.****1. Summary**

Pursuant to § 854 of the Public Utilities Code,¹ we approve the proposed transaction whereby West Corporation (West) acquires indirect control of Intrado Communications, Inc. (Intrado).

In addition, we approve the proposed Settlement Agreement² entered into between the Commission's Safety and Enforcement Division,³ West and Intrado resolving all issues in this application regarding West's violation of § 854 in failing to obtain Commission authorization prior to the transfer of indirect control of Intrado to West.

¹ All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

² The Settlement Agreement is included as Attachment A to this decision.

³ Formerly known as the Consumer Protection and Safety Division.

This Settlement Agreement resolves all contested issues in this proceeding and assures that the proposed acquisition of Intrado by West is in the public interest. The Settlement Agreement also requires that Intrado make a settlement payment to the State of California General Fund in the amount of \$5,000 within 30 days of the Commission issuing a final decision approving the Settlement Agreement without material change.

This proceeding is closed.

2. Factual Background

West Corporation (West) acquired indirect control of Intrado Communications, Inc. (Intrado), a corporation holding a Certificate of Public Convenience (CPCN) from the Commission, in a merger transaction with Intrado Inc. -- Parent company to Intrado (Parent) in 2006. (West and Intrado shall be jointly referred to as Applicants) In the course of an internal review, Applicants discovered that approval for the merger transaction was not obtained from the Commission. Applicants filed Application (A.) 12-09-008 on September 11, 2012 to request authority from the Commission for West to acquire indirect control of Intrado.

On September 27, 2012, Resolution ALJ 176-3301 reached a preliminary determination that this proceeding was ratesetting and that no hearings would be necessary.

On October 17, 2012, Safety and Enforcement Division (SED) filed a Protest to the application, alleging that West and Intrado violated § 854 for their failure to obtain Commission authorization prior to the transfer of indirect control of Intrado to West. SED requested that the Commission impose a penalty against Applicants and deny retroactive authority to the transfer of control.

On January 2, 2013 the assigned Administrative Law Judge (ALJ) issued an Assigned Administrative Law Judge's Ruling setting a prehearing conference (PHC) for February 7, 2013. In that ruling, the ALJ required the parties to, among other things, meet and confer regarding possible settlement.

The parties engaged in settlement negotiations, and in light of the progress in settlement discussions, the PHC was taken off the calendar by the ALJ through e-mail on January 28, 2013.

On February 13, 2013, SED, West and Intrado filed a Joint Motion for adoption of a Settlement Agreement, along with a copy of the settlement agreement itself.

3. The Transaction

Intrado, a wholly-owned subsidiary of Intrado, Inc. (Intrado, Inc. or Parent), is a Delaware corporation with its principal offices located in Longmont, Colorado. Intrado holds a CPCN from the Commission to provide competitive local exchange services. Intrado is also registered with the Commission as a non-dominant provider of interexchange services. Specifically, Intrado provides 9-1-1 infrastructure, systems and services to public safety organizations. Intrado does not yet have any customers in California.

West is a Delaware corporation with its principal place of business in Omaha, Nebraska. West is a provider of technology-driven voice and data solutions and does not hold any telecommunications regulatory authority.

In 2006, Parent and West consummated an Agreement and Plan of Merger. West acquired 100% of the outstanding shares of Common Stock in Parent, making Parent a wholly-owned direct subsidiary of West and Intrado a wholly-owned indirect subsidiary of West. No assets or authorization to provide

service were transferred from Intrado to West as a result of the Agreement and Plan of Merger.

The Applicants assert that this transaction was and continues to be “consistent with the public interest.”⁴ They further contend that Intrado is a leading provider of 9-1-1 systems and services while West is a leading national and international provider of communications services solutions. The acquisition of Intrado complements West’s existing operation while providing Intrado with access to additional infrastructure and resources.⁵

The Commission previously reviewed and approved West’s application to acquire ownership of a certified telecommunications provider earlier this year, in its acquisition of HyperCube.⁶

4. The Settlement Agreement and Terms

As noted in the Factual Background above, the Application was protested, and all the parties to the proceeding were able to reach a settlement. The Parties have agreed that the proposed Settlement Agreement is intended to fully resolve all issues SED’s protest raised. In the Joint Motion, the settling parties summarize the key terms and commitments in the Settlement Agreement as follows:

1. Applicants admit that West failed to obtain Commission authorization for the transfer of indirect control of Intrado to West.⁷

⁴ Joint Application at 8.

⁵ *Id.* at 8-9.

⁶ *See*, D.12-03-040. In California, Hypercube holds a CPCN and is authorized to provide local exchange and intrastate interexchange services pursuant to D.01-11-049.

⁷ Settlement Agreement, Paragraph 15.

2. The Applicants agree that Intrado will pay a single penalty of \$5,000.00 for violating of § 854.⁸
3. The Parties agree that the authority sought in the Application does not constitute retroactive authority and that any authority granted by the Commission with respect to the Application be effective from the date of a final decision adopted by the commission in proceeding A.12-09-008.⁹

All parties agree that the Settlement agreement “is fair and reasonable and in the public interest. The Parties also believe that no further action is warranted ... and that this Agreement is in the best interests of the general public.”¹⁰

5. Jurisdiction and Relevant Precedent

Section 854 requires that a public utility receive prior approval from the Commission before consummating any type of merger/acquisition transaction. Specifically, Section 854(a) states:

- (a) No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission.

In administering these sections of the Public Utilities Code, the Commission seeks “to ensure that a proposed transfer is not adverse to the public interest.”¹¹ At times, the Commission has also sought to determine whether a transaction serves the public interest.¹²

⁸ *Id.* Paragraph 16.

⁹ *Id.* Paragraph 18.

¹⁰ *Id.* Paragraph 13.

¹¹ Decision (D.) 10-10-017 at 15.

¹² D. 07-05-031 at 3.

The Commission has established two major criteria for determining whether a CPCN should be granted, or transferred. First, an applicant who desires to operate as a provider of facilities-based local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers. Second, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

In addition, the terms of the settlement require review by the Commission. For a settlement, the Commission's Rules of Practice and Procedure set a standard for review:

12.1(d) The Commission will not approve settlements whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

We will therefore examine the proposed transaction, as modified by the Settlement Agreement, to determine whether it meets these requirements.

6. Issues Before the Commission

The major issue in this proceeding is whether the Commission should approve the transaction, including the Settlement Agreement that leads to the requested change in indirect control of Intrado to West.

To reach this result, the Commission must first determine whether the Settlement Agreement meets the conditions for the approval of a settlement, and then determine whether the proposed transaction, as modified by the Settlement Agreement, is in the public interest.

If the transaction, as modified by the Settlement Agreement, serves the public interest and meets the criteria for a change of control, then the Commission can approve the transaction.

7. Discussion of the Settlement and the Transaction as Modified by the Settlement

7.1. Settlement Complies With Rule 12.1(d)

We have historically favored settlements that are fair and reasonable in light of the record as a whole. Concerning the record in this proceeding, the stipulation of facts in the Settlement Agreement constitutes a clear and succinct description of the facts surrounding the dispute between the parties.

According to the Joint Motion to accept the settlement, the Settlement Agreement represents a compromise of the parties' litigation positions. We find that the Settlement Agreement has the unanimous support of all parties, reasonably resolves a potentially time-consuming dispute and each party has made significant concessions to resolve the issues in this proceeding in a manner that reflects a reasonable compromise of their respective litigation positions.¹³

Further, we find that nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission decisions, and it provides sufficient information for the Commission to discharge its future regulatory obligations with respect to the parties and their interests and obligations. The Settlement Agreement does not contradict current Commission rules and it does

¹³ D.92-12-019 (46, CPUC2d 538, 550-551) re: all party settlements.

not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding.¹⁴

The Settlement Agreement is in the public interest. It is consistent with the Commission's well-established policy of supporting resolution of disputed matters through settlement, it reflects a reasonable compromise, and it avoids the time, expense, and uncertainty of evidentiary hearings and further litigation. We find that the benefits to the public, including payment to the General Fund, outweigh the benefits of continued litigation and its associated cost.

As for the penalty amount proposed in the Settlement Agreement, we look to the criteria established in D.98-12-075, Appendix B, which has provided guidance in similar cases. We consider the following criteria: 1) the severity of the economic or physical harm resulting from the violation; 2) the utility's conduct to prevent, detect, disclose, and rectify the violation; 3) the utility's financial resources; 4) the public interest involved; 5) the totality of the circumstances; and 6) Commission precedents.

We find the penalty amount of \$5,000.00 to be reasonable. The facts indicate Intrado did not have, and has not since the merger in 2006, acquired any California customers--therefore the transaction caused no economic or physical harm to California ratepayers/customers. The Applicants voluntarily submitted to the jurisdiction of the Commission after finding its error during an internal review. Thus, while West is a large company with significant financial resources, we find the Settlement Agreement is reasonable in light of the record as a whole,

¹⁴ See Note 13.

consistent with law, and in the public interest. It resolves all issues before the Commission in this proceeding.

7.2. The Transaction as Modified by the Settlement Agreement Should be Authorized.

In reviewing the transaction, as modified by the Settlement Agreement, we need both to determine whether the transaction meets the standards for a change of control, and whether the transaction, as modified by the Settlement Agreement, meets the public interest standard of § 854(a).

We have previously reviewed and approved West's qualification in acquiring a company that possesses a California CPCN,¹⁵ namely HyperCube, and we re-evaluate its technical and financial fitness here.

Where a company that does not possess a CPCN desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking a CPCN. The Commission has established two major criteria for determining whether a CPCN should be granted, or transferred. First, an applicant who desires to operate as a provider of facilities-based local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers. Second, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

¹⁵ See D.12-03-040 at 5.

The instant application includes a Consolidated Statement of Operations for West for fiscal years 2011, 2010, and 2009. The statements show that West has sufficient resources to meet the Commission's financial requirements.

In this case, Intrado, which holds a CPCN in California, is being indirectly acquired by West. Both Applicants have submitted significant information relative to the technical expertise of both companies. The Applicants assert that they possess the level of technical expertise necessary to qualify for a CPCN in California. Nothing before us contradicts that assertion.

Exhibit G to the application contains the Applicants' disclosures relative to "Regulatory and Financial History of Joint Applicants, Officers, Directors and Major Shareholders." Most of the 13 entries involve minor and relatively minor regulatory actions related to West subsidiaries involved in debt collection activities. One debt collection related regulatory action, however, is quite serious and must be noted by this Commission in this Decision. Applicants reveal that the Federal Trade Commission (FTC) conducted a non-public inquiry into the 2005 through 2007 debt collection practices of West Asset Management and ultimately alleged that West had violated the federal Fair Debt Collection Practices Act. Applicants further reveal that on March 15, 2011, "without admitting liability, West agreed to settle the case and pay \$2,800,000 to avoid the costs of defense and the negative publicity." We trust that the settlement of this matter between the FTC and West has resulted in West making the necessary consumer protection changes needed in its debt collection practices.

Applicants also reveal, in Exhibit G, that the Chief Executive Officer of West's recently acquired subsidiaries, Hypercube, LLC & HyperCube Telecom, LLC, Ronald Beaumont, was the Chief Operating Officer of WorldCom at the time WorldCom filed for Chapter 11 bankruptcy in 2002, and that Clay Myers,

the Executive Vice President and Chief Financial Officer of HyperCube, LLC, served as Senior Vice President of Finance at Allegiance Telecom when it filed a petition for Chapter 11 bankruptcy in May of 2003. As these disclosures were made and resolved in our review of the HyperCube acquisition, we will not require additional information from the Applicants at this time.¹⁶

Applicants represent that no other persons associated with or employed by Applicants as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with any telecommunication carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule or order. Nothing before us contradicts that assertion.

Next, in reviewing the specifics of this transaction, the Commission must determine whether the proposed transaction complies with the provisions of § 854. As noted above, all parties agree that the transaction, when subject to the conditions specified in the Settlement Agreement, “provides a net public benefit by acknowledging the importance of complying with § 854 and imposing a reasonable penalty to ensure future deterrence by Applicants and other parties.”¹⁷ The Settlement Agreement also ensures that no retroactive authority is granted to the Joint Applicants for the transfer of indirect control.¹⁸

With their application, the Applicants filed a Motion for Leave to File Confidential Materials Exhibit E (Merger Agreement) Under Seal pursuant to Pub. Util. Code § 583 and General Order 66-C (2.2)(b). Applicants assert that the

¹⁶ See D.12-03-040 at 7.

¹⁷ See Joint Motion at 4.

information contained in Exhibit E is a non-public Merger agreement. Joint Applicants assert that public disclosure of this private, confidential information could subject them to potential fraud and unfair competitive disadvantage in connection with the business negotiations and dealings with vendors, customers, potential business partners and others. We have granted similar requests in the past and we agree that details of the Merger Agreement, if disclosed, could place applicants at an unfair competitive disadvantage, therefore, the motion is granted.

Based on the terms of the Settlement Agreement and a consideration of the terms of the proposed transaction, we find that approving this transaction, including the terms of the Settlement Agreement, is in the public interest. Since the transaction, including the terms of the Settlement Agreement, is in the public interest, it is also not adverse to the public interest. Thus, the proposed transaction, as described in the application and as modified by the terms of the Settlement Agreement, which is attachment A to this decision, fulfills the requirements of § 854 and it is reasonable for the Commission to approve this transaction, as modified by the settlement agreement.

8. Conclusion

As a result of the above considerations, we find that the Settlement Agreement is (1) reasonable in light of the record; (2) consistent with the law; and (3) in the public interest. The settlement also meets the preconditions to the approval of all party settlements set forth in D.92-12-019 because it commands the unanimous sponsorship of all active parties, the parties are fairly

¹⁸ Settlement Agreement, Paragraph 18.

representative of the affected interests, no term of the settlement contravenes statutory provision or prior Commission decisions and the settlement conveys to the Commission sufficient information to discharge its future regulatory obligations with respect to the parties and their interests.

The record of this proceeding consists principally of the Application, the Protest of SED, and the Joint Motion to approve the Settlement Agreement. We find that a record based on these filed materials is adequate to enable us to determine that the settlement meets the Commission's standards for approval of "all party" settlements and of settlements in general, and that the transaction, as modified by the settlement, is in the public interest. Therefore, the Application, subject to the conditions contained in the Settlement Agreement, is granted.

In addition, we have substantively reviewed the transaction. West possesses both the financial resources and technical competence that a change of control requires. Thus, the transaction, as amended by the Settlement Agreement, meets all Commission criteria and is in the public interest.

Finally, since there are no other outstanding issues, this proceeding should be closed.

9. Categorization and Need for Hearing

In Resolution ALJ 176-3301, dated September 27, 2012 the Commission preliminarily categorized this application as rate setting, and preliminarily determined that hearings were not necessary. With the filing of the Joint Motion and the Settlement Agreement, the proposed transaction, as modified by the settlement, is unopposed. A public hearing is not necessary.

10. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities

Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

11. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Myra Prestidge was the initially assigned ALJ. S. Pat Tsen is the currently assigned ALJ and the presiding officer in this proceeding.

Findings of Fact

1. Intrado, Inc. is a Delaware Corporation
2. Intrado is a Delaware Corporation and a wholly owned direct subsidiary of Intrado, Inc.
3. West is a Delaware Corporation.
4. Intrado holds a CPCN to provide competitive local exchange services. It also registered with the Commission as a non-dominant provider of interexchange services. Intrado does not yet have any customers in California.
5. West is a provider of technology driven voice and data solutions and does not hold any telecommunications regulatory authority in California.
6. West, through its subsidiaries, provide a broad range of communications and network infrastructure solutions to business customers throughout the United States and globally. West has sufficient experience and expertise to continue the telecommunications operations of Intrado post acquisition.
7. As a result of the transaction, West will become the ultimate parent of Intrado and acquire indirect control of the company.
8. West's acquisition of indirect control of Intrado will not involve a transfer of customers of Intrado.

9. Applicants have provided financial statements demonstrating that West has access to well over \$100,000 in cash or cash equivalent, which is reasonably liquid and available and which is sufficient to cover operating expenses and any deposits third-party carriers may require.

10. Applicants represents that no other persons associated with or employed by Applicants as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with any telecommunication carrier that filed for bankruptcy, or was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

11. In light of the parties' settlement and given the completeness of the Application, the Settlement Agreement, and the Joint Motion seeking its approval, the ALJ held no hearings.

12. This Settlement Agreement is an "all party" settlement that commands the unanimous sponsorship of all active parties.

13. The parties to this Settlement Agreement are fairly representative of the affected interests.

14. No term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.

15. The Settlement Agreement conveys to the Commission sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

16. The Settlement Agreement is (1) reasonable in light of the record; (2) consistent with the law; (3) in the public interest; and (4) an acceptable outcome to a pending proceeding that avoids the time, expense and uncertainty of litigation on the issues raised in this application.

17. The proposed transaction, as described in the Joint Application and as modified by the terms of the Settlement Agreement, produces benefits for businesses, the local community, and the states' communications infrastructure.

18. The proposed transaction, as described in the Joint Application and as modified by the terms of the Settlement Agreement is in the public interest.

19. Approving the proposed transaction, as described in the Joint Application and as modified by the terms of the Settlement Agreement is the relief requested by the Joint Applicants and this relief is not opposed by any party in this proceeding.

Conclusions of Law

1. Where a company that does not possess a California CPCN desires to acquire control of a company or companies that do possess a California CPCN, the Commission will apply the same requirements, to the acquiring company, as would be applied to an initial applicant seeking a CPCN.

2. West will acquire indirect control of Intrado. West has the financial resources and the technical capabilities that the issuance of a CPCN would require.

3. The settlement between West, Intrado, and SED is an all-party settlement and meets the requirements established in D.92-12-019 and Rule 12.1.

4. The transaction, as modified by the Settlement Agreement, is in the public interest, meets the criteria of Section 854(a) of the Pub. Util. Code, and it should be approved.

5. Nothing in the Settlement Agreement contravenes any statute or Commission decision or rule.

6. The benefits to the public of the Settlement Agreement outweigh the benefits of continued litigation.

7. With the filing of the Settlement Agreement, this proceeding becomes an uncontested matter. In approving the transaction and accepting the Settlement Agreement, which modifies the terms of the transaction, we are granting the relief requested.

8. The penalty level of the Settlement Agreement is reasonable given the totality of the circumstances.

9. The Settlement Agreement should be approved.

O R D E R

IT IS ORDERED that:

1. The February 13, 2013 Joint Motion by West Corporation, Intrado Communications, Inc. and the Commission's Safety and Enforcement Division, for Commission Adoption of Settlement pursuant to Article 12.1 of the Commission's Rules of Practice and Procedure is granted and the Settlement Agreement, Attachment A to this decision, is approved.

2. Pursuant to Pub. Util. Code § 854, the transaction, as described in the joint application of West Corporation and Intrado Communications, Inc., is granted subject to the conditions contained in the Settlement Agreement.

3. Intrado Communications Inc. shall make a settlement payment of \$5,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102, within 30 days of the effective date of this order. Intrado shall write on the face of the check or money order "For deposit to the General Fund per Decision _____."

PROPOSED DECISION

4. Intrado Communications Inc. must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five business days after the effective date of transfer of control, Intrado Communications Inc. must submit a Tier 1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier 1 advice letter annually, but not later than March 31, with a copy of the executed bond.

5. Intrado Communications Inc. must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

6. Application 12-09-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A



FILED

02-13-13
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Joint Application of West Corporation
and Intrado Communications Inc.
(U6579C) for Authority for West
Corporation to Acquire Indirect Control
of Intrado Communications, Inc.

Application 12-09-008
(Filed September 11, 2012)

**SETTLEMENT AGREEMENT BETWEEN
SAFETY AND ENFORCEMENT DIVISION AND
JOINT APPLICANTS WEST CORPORATION AND
INTRADO COMMUNICATIONS INC.**

The Safety and Enforcement Division (“SED”)¹ of the California Public Utilities Commission (“Commission” or “CPUC”) and Joint Applicants, West Corporation (“West”) and Intrado Communications Inc. (“Intrado”) hereby agree on the following terms for the Settlement Agreement (“Agreement”) resolving issues raised in SED’s protest of Application (A.) 12-09-008. The three above-mentioned parties are sometimes individually referred to as “Party” and/or collectively referred to as “the Parties.”

I. JURISDICTION

1. The CPUC has jurisdiction of the subject matter.

II. JOINT STIPULATION OF THE FACTS

The Parties, as defined by the signatories to this Agreement, hereby submit the following joint stipulation of the facts:

2. Intrado is a Delaware corporation with its principal offices located in Longmont, Colorado.
3. Intrado is a wholly-owned subsidiary of Intrado Inc. (“Parent”).

¹ SED was formerly known as the Consumer Protection and Safety Division.

4. Intrado holds a Certificate of Public Convenience and Necessity (“CPCN”) from the Commission to provide competitive local exchange services and is also registered with the CPUC as a non-dominant provider of interexchange services. Specifically, Intrado provides 9-1-1 infrastructure, systems and services to public safety organizations.
5. West is a Delaware corporation with its principal place of business in Omaha, Nebraska.
6. West is a provider of technology-driven voice and data solutions and does not hold any telecommunications regulatory authority.
7. In 2006, Intrado’s parent company (“Intrado Inc.” or “Parent”) and West consummated an Agreement and Plan of Merger.
8. As a result of the Agreement and Plan of Merger between Intrado’s Parent company and West, West acquired 100% of the outstanding shares of Common Stock in Parent, making Parent a wholly-owned direct subsidiary of West and Intrado a wholly-owned indirect subsidiary of West.
9. No assets or authorization to provide service were transferred from Intrado to West as a result of the Agreement and Plan of Merger.
10. Because Intrado does not yet have customers in California, the change in ownership did not result in a loss or impairment of service for any customers, nor did it change the services which Intrado offers in California.
11. In the course of an internal review, Joint Applicants discovered that approval of the acquisition described in paragraph 8 above had not been obtained from the CPUC. Joint Applicants filed Application (A.) 12-09-008 on September 11, 2012 to correct that situation.
12. On October 17, 2012, SED filed a Protest to A.12-09-008 alleging that West and Intrado violated Public Utilities Code § 854 for their failure to obtain Commission authorization for the transfer of control described in Paragraph 8 and requested that the Commission impose a penalty against Joint Applicants for such alleged violation.
13. The Parties have agreed to settle this action on the terms set forth in this Agreement. The Parties believe that the resolution is fair and reasonable and in the public interest. The Parties also believe that no further action is warranted concerning the specific violations alleged in SED’s Protest except as provided in this Agreement and that this Agreement is in the best interests of the general public.

III. TERMS OF AGREEMENT

14. The Parties enter into this Agreement pursuant to a compromise and settlement of disputed claims. Joint Applicants enter into this Agreement of their own volition and do not admit any issue of law or fact alleged in SED's Protest, other than those admissions made herein. The Parties waive the right to appeal any Commission decision approving this Agreement both as to form and content.
15. Joint Applicants West and Intrado admit that West violated § 854 by failing to obtain Commission authorization of the transfer of indirect control of Intrado to West as described in Paragraph 8.
16. Joint Applicants West and Intrado agree that Intrado will pay a single penalty of \$5,000 to the State of California General Fund for failing to seek Commission authorization pursuant to § 854 for the 2006 indirect transfer of control of Intrado to West as described in Paragraph 8. Payment of the \$5,000 shall be in the form of a cashier's check made payable to the California Public Utilities Commission. Payment is due and payable within 30 days after the Commission issues a decision adopting this settlement agreement.
17. Payment pursuant to this Agreement shall be delivered to the following address:

California Public Utilities Commission
Fiscal Office
505 Van Ness Avenue
San Francisco, CA 94102-3214

18. The Parties agree that the authority sought in the Application does not constitute retroactive authority and that any authority granted by the Commission with respect to Application be effective from the date of a final decision adopted by the Commission in proceeding A.12-09-008.

IV. DISMISSAL AND SETTLEMENT

19. Approvals. After signing this Agreement, including prior to final approval from the Commission, the Parties shall actively support prompt approval of the Agreement and its incorporation into a decision granting A.12-09-008 such that no further Commission order is required to grant A.12-09-008. That support will include briefing, comments on the proposed decision, written and oral testimony, if necessary, appearances, and any other means as may be needed to obtain the necessary approval. The Parties agree that if the Commission does not approve the Agreement unconditionally and without modification, any party may, in its sole discretion, elect to terminate the Agreement. However, prior to any such termination, the

Parties agree to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

20. Compromise. The Parties agree that this Agreement represents a compromise.
21. Scope and Effect of Agreement. This Agreement represents a full and final resolution of the issues set forth in SED's protest of Joint Applicants' Application 12-09-008 for Authority for West Corporation to Acquire Indirect Control of Intrado Communications Inc., and the matters giving rise thereto, including, but not limited to, all potential claims, penalties, enforcement actions, or investigations. After the Effective Date of the Decision adopting this Settlement Agreement, SED will initiate no enforcement action, seek no administrative or other penalties against Joint Applicants or either of them based on the evidence of the violations recited above in this case. This provision will not apply if Joint Applicants or either of them breach this Settlement or violates the Commission order approving it.
22. Other Proceedings. The Parties agree that neither the Joint Statement of the Case nor anything contained in this Agreement constitutes (1) a binding admission or concession in any other proceeding or (2) except as expressly set forth herein an admission of any issue of law or fact in this proceeding. The Parties have entered into this Agreement to effect a compromise and settlement of the contested matters pending before the Commission.

V. GENERAL TERMS

23. Severability. No individual term of this Agreement is assented to by any Party except in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and each part is interdependent on each and all other parts. Any party may withdraw from this Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein, subject to the good faith negotiations set forth in Paragraph 18.
24. Entire Agreement. This Agreement contains the entire Agreement and understanding concerning the subject matter hereof and supersedes and replaces all prior negotiations, proposed agreements, whether written or oral, express or implied, of any type whatsoever. No change, addition, waiver, amendment, or modification of any of the terms or conditions hereof shall be valid or binding on either Party unless it is memorialized in writing and signed by all Parties.

25. Authority. The undersigned representatives of the respective Parties hereby acknowledge that they are empowered and authorized by the Commission, in the case of SED or corporate entity, in the case of West and Intrado, to execute this Settlement Agreement and to make this Settlement Agreement binding on behalf of the Party they represent.
26. Successor and Assigns. This Agreement and all covenants set forth herein shall be binding upon and shall insure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.
27. Interpretation. The Parties acknowledge and agree that each Party was represented by independent counsel with respect to the negotiation, preparation, and execution of this Agreement. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, such interpretation shall not be resolved by any rule for interpretation against the Party who causes the uncertainty to exist or against the draftsman.
28. Section Headings. The section headings contained in this Settlement Agreement are solely for the purpose of references, are not part of the agreement of the Parties, and shall not in any way affect the meaning of interpretation of this Settlement Agreement.
29. Further Documents. Each party shall execute, acknowledge, and deliver such other documents and instruments as are reasonably necessary to carry out the intents and purposes of this Agreement.
30. Notice. Any notice, report, request, or statement provided for in this Agreement shall be deemed sufficiently given when personally delivered or sent by overnight delivery (e.g., Federal Express) or sent by certified or registered mail addressed to the Party for whom intended to the addresses set forth below.

If Addressed ToSend To

Consumer Protection & Safety Division

Hien Vo Winter, Staff Counsel
 CA Public Utilities Commission
 320 West Fourth Street, Ste 500
 Los Angeles, CA 90013

Julie Halligan, Deputy Director
Safety and Enforcement Division
505 Van Ness Avenue
San Francisco, CA 94102

Intrado Communications Inc.

General Counsel
West Corporation
11808 Miracle Hills Dr.
Omaha, Nebraska 68154

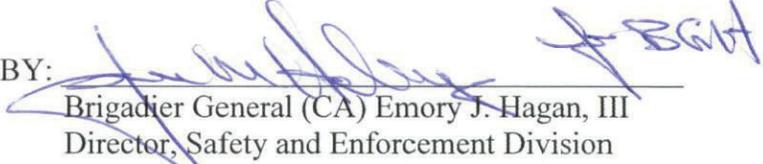
West Corporation

General Counsel
West Corporation
11808 Miracle Hills Dr.
Omaha, Nebraska 68154

31. Execution in Counterparts. This Settlement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts will be deemed an original and will together constitute the same Settlement. This Settlement is the entire agreement among the Parties, which cannot be amended or modified without the express written consent of all the Parties.

**CALIFORNIA PUBLIC UTILITIES
COMMISSION SAFETY AND
ENFORCEMENT DIVISION**

DATED: 2-7-2013

BY: 
Brigadier General (CA) Emory J. Hagan, III
Director, Safety and Enforcement Division

DATED: 2-13-2013

BY: 
Hien Vo Winter, Staff Counsel
California Public Utilities Commission
Attorney for SED

WEST CORPORATION

DATED: _____

BY: _____
Lynn A. Stang
Attorney for West Corporation

DATED: _____

BY: _____
David C. Mussman
EVP, General Counsel
West Corporation
11808 Miracle Hills Dr.
Omaha, Nebraska 68154

INTRADO COMMUNICATIONS INC.

DATED: _____

BY: _____
Lynn A. Stang
Attorney for Intrado Communications Inc.

DATED: _____

BY: _____
Craig W. Donaldson
SVP, Regulatory & Government Affairs
Intrado Inc.
1601 Dry Creek Drive
Longmont, CO 80503

**CALIFORNIA PUBLIC UTILITIES
COMMISSION SAFETY AND
ENFORCEMENT DIVISION**

DATED: _____

BY: _____
Brigadier General (CA) Emory J. Hagan, III
Director, Safety and Enforcement Division

DATED: _____

BY: _____
Hien Vo Winter, Staff Counsel
California Public Utilities Commission
Attorney for SED

WEST CORPORATION

DATED: 2/7/13

BY: 
Lynn A. Stang
Attorney for West Corporation

DATED: 2-5-2013

BY: 
David C. Mussman
EVP, General Counsel
West Corporation
11808 Miracle Hills Dr.
Omaha, Nebraska 68154

INTRADO COMMUNICATIONS INC.

DATED: _____

BY: _____
Lynn A. Stang
Attorney for Intrado Communications Inc.

DATED: _____

BY: _____
Craig W. Donaldson
SVP, Regulatory & Government Affairs
Intrado Inc.
1601 Dry Creek Drive
Longmont, CO 80503

**CALIFORNIA PUBLIC UTILITIES
COMMISSION SAFETY AND
ENFORCEMENT DIVISION**

DATED: _____

BY: _____
Brigadier General (CA) Emory J. Hagan, III
Director, Safety and Enforcement Division

DATED: _____

BY: _____
Hien Vo Winter, Staff Counsel
California Public Utilities Commission
Attorney for SED

WEST CORPORATION

DATED: _____

BY: _____
Lynn A. Stang
Attorney for West Corporation

DATED: _____

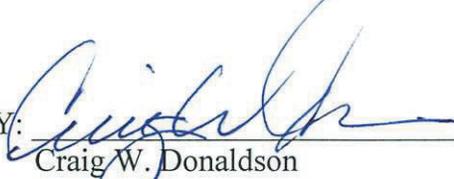
BY: _____
David C. Mussman
EVP, General Counsel
West Corporation
11808 Miracle Hills Dr.
Omaha, Nebraska 68154

INTRADO COMMUNICATIONS INC.

DATED: 2/2/13

BY: 
Lynn A. Stang
Attorney for Intrado Communications Inc.

DATED: Feb. 5, 2013

BY: 
Craig W. Donaldson
SVP, Regulatory & Government Affairs
Intrado Inc.
1601 Dry Creek Drive
Longmont, CO 80503