

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Petition of)
Communication Options, Inc. for Arbitration)
of Interconnection Rates, Terms and)
Conditions and Related Arrangements with)
United Telephone Company of Ohio dba)
Embarq Pursuant to Section 252(b) of The)
Telecommunications Act of 1996)

Case No. 08-45-TP-ARB

MOTION TO DISMISS OF UNITED TELEPHONE COMPANY OF OHIO DBA
EMBARQ

United Telephone Company of Ohio d/b/a Embarq ("Embarq") respectfully moves for an order dismissing the Petition for Arbitration ("Petition") filed by Communication Options, Inc. ("COI") to the extent that the Petition seeks arbitration regarding the pricing and costing of services to be provided under the interconnection agreement ("ICA"). Those aspects of the Petition should be dismissed because, as explained more fully below, COI has failed to meet its obligation to negotiate in good faith under the Telecommunications Act of 1996 ("Act") and has failed to comply with Commission rules.

MEMORANDUM IN SUPPORT

Those aspects of the Petition relating to the pricing and costing of services should be dismissed because COI has failed to meet its obligation to negotiate in good faith.

§251(c)(1) of the Act requires requesting carriers to negotiate in good faith. And

O.A.C. Rule 4901:1-7-08(A) which describes the duty to negotiate states:

All telephone companies have the duty to negotiate in good faith the terms and conditions of their agreements. [emphasis supplied]

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COI has failed to comply with this fundamental principle of the voluntary negotiation and arbitration procedures established in the Act and by Commission rule.

COI filed its Petition and sought arbitration for a number of allegedly unresolved issues. Issue 15 concerns the prices that Embarq proposes to charge COI. Incredibly, COI, without the benefit of *ever* reviewing Embarq's costs, argues in its Petition that Embarq's rates, based upon its TELRIC costs, are not justified. COI should not be permitted to arbitrate this issue because COI has not met its obligation to negotiate in good faith with respect to it.

During the negotiations, Embarq stood ready to provide COI with proprietary cost study information in support of Embarq's rates. Naturally, before providing the cost studies, Embarq requested that COI sign a non-disclosure agreement ("NDA"). COI has yet to sign the NDA and, as a consequence, has never reviewed Embarq's cost studies.

Furthermore, COI has not retained an expert to review Embarq's cost studies. COI has failed to identify any specific areas where it claims that Embarq's cost studies are wrong. Moreover, COI has not proposed any changes to the rates Embarq proposed. Absent COI's review and analysis of Embarq's cost studies, and absent a counter-proposed set of rates, it is not possible for good faith negotiations to occur regarding Embarq's costs. And, indeed, no good faith negotiation has occurred because of COI's failure to analyze Embarq's cost studies and to propose different rates.


COI's failure to negotiate in good faith will cause Embarq and the Commission to needlessly expend time and resources on issues that the parties ought to be able to resolve. Embarq recently concluded negotiations with Cincinnati Bell Extended Territories ("CBET") with respect to a new ICA. (That ICA was filed with the Commission on December 31, 2007.) During the negotiations between Embarq and

CBET, CBET engaged cost study experts to review Embarq's cost studies. Based on that review, Embarq and CBET were able to conduct meaningful negotiations regarding Embarq's cost studies. Based on that review, CBET and Embarq reached a negotiated settlement with respect to costing and pricing. But COI, without any meaningful review or counter-analysis, has rejected those same rates as not cost-justified.

Embarq submits that, if COI simply negotiates in good faith as required, COI will be required to review Embarq's cost studies and engage in meaningful discussion of them with Embarq. Good faith negotiations increase the likelihood that the parties will reach a negotiated settlement. If COI is permitted to avoid its legal obligation to negotiate in good faith regarding costing and pricing, the result will be that the Commission and Embarq will be forced to unnecessarily expend time and money in arbitrating. Furthermore, even if a settlement is not reached after good faith negotiations, the parties will have narrowed the issues. The arbitration will then be more efficient. And the legally required process will have been followed.

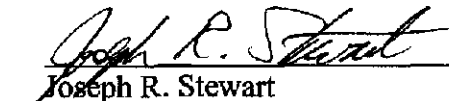
Because COI has failed to negotiate in good faith with respect to Embarq's cost studies, Issue 15 should be dismissed.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Motion to Dismiss was hand-delivered or served via first class mail, postage prepaid this 11th day of February 2008 to the persons listed below.



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