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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

RESPONSE OF UNITED TELEPHONE COMPANY OF OHIO D/B/A EMBARQ TO PETITION FOR ARBITRATION OF COMMUNICATION OPTIONS, INC.

United Telephone Company of Ohio d/b/a Embarq ("Embarq" or "EQ") provides the following response to the Petition for Arbitration ("Petition") of Communication Options, Inc. ("COI").

1. Embarq lacks sufficient information to form a belief as to the truth or the falsity of the allegations regarding COI's corporate status and authorization.

2. Embarq agrees to utilize the contact information for COI in the Petition.

3. Embarq admits that it is an Ohio corporation with an office in Columbus, Ohio. Embarq also admits that it is an ILEC as alleged by COI.

4. Embarq admits the allegations regarding contact information for Embarq representatives.

5. EQ denies the negotiation starting point with COI was December 11, 2006. COI requested to negotiate December 11, 2006, but did not return a redline of the ICA for negotiation purposes until May 15, 2007- 4 days before Day 160. Embarq offered to extend the negotiation window on May 16, 2007 to allow the parties a

reasonable amount of time to negotiate the agreement. Embarq admits all other facts in the Negotiations History section of the Petition as averred by COI.

6. Embarq denies Exhibit C accurately reflects the issues that remain between the parties at the time of filing. On January 16, 2008, COI notified EQ that they added Section 7.3.2 to the petition COI filed; however, it is not reflected as a disputed issue or redline in Exhibit C. In addition, Exhibit C does not reflect the disputed reciprocal compensation ("recip comp") charges (related to Issues 6, 13, and 14 on the Arbitration Issue Matrix) either by highlighting the section or by redline changes to the applicable rates as the dispute was reflected in the price sheet from COI's e-mail to Embarq on 12/6/07 at 9:03 am, prior to COI's filing for arbitration, which identified the issues in the price sheet for arbitration purposes in yellow highlight.

7. EQ admits the Parties have an agreed upon issues matrix (Exhibit D), which contains the parties' issues and positions on the issues currently in dispute, including the two noted above.

8. EQ denies COI has provided a position for Issues 3, 4, and 5. Citing prior contract language is a statement of fact and not a position for purposes of understanding a Party's positions on issues in this arbitration.

9. EQ denies COI has accurately identified the VNXX traffic in issue #14. COI has failed to provide EQ with traffic studies supporting their self-reported 1% VNXX, or to provide detailed records that mirror the billing invoices COI sends to EQ which would allow EQ the opportunity to verify that COI does, in fact, remove all ISP traffic from the billing invoices sent

to EQ. EQ further avers that a traffic study was conducted by EQ for purposes of this arbitration, which included traffic between Oct-Dec of 2007. COI bills EQ approximately 2 million MOU's per month. EQ avers that COI is currently billing EQ for ISP traffic that COI alleges in their petition is "stripped" off the billing invoice. Of this 25% ISP-bound traffic, EQ avers originating access charges apply to COI for any traffic that does not originate and terminate in the same local calling area. EQ requests, again, that COI either refute or confirm EQ's findings by providing call detail records from which the parties can make a determination of the type of traffic exchanged between the parties for accurate billing purposes.

10. EQ denies that recip comp, or any other terminating compensation, charges are appropriate for non-local VNXX or non-local ISP-bound traffic. Only traffic that originates and terminates in the same Embarq local calling area is eligible for recip comp. Otherwise, it is EQ's position that originating access applies to such traffic, consistent with FCC rules and this Commission's prior rulings with regard to non-local VNXX.

11. EQ avers that during the last few negotiation calls with COI, COI changed its position from its longstanding practice of bill & keep for ISP-bound traffic, and maintained that they wanted recip comp for ISP-bound traffic. In response to COI's newly asserted position, EQ requested detailed traffic study documentation in the last few negotiation calls in order to support COI's self-reported 1% VNXX. On 12/20/2007 at 3:55 p.m., via e-mail

communication, EQ again requested detailed traffic studies to support COI's reported 1% VNXX traffic. COI still has not provided any documentation to EQ to support their 1% VNXX. EQ requests, as part of this arbitration proceeding, a detailed traffic study from COI in order to validate the traffic appropriate for recip comp billing, which includes identifying all traffic exchanged over the local interconnection trunks, including the actual amount of VNXX traffic, ISP-bound traffic, and transit traffic that should properly be excluded from billing invoices sent to EQ for reciprocal compensation payments for local traffic on a going forward basis under the resulting agreement.

12. EQ admits that it has had previous ICAs with COI and that Embarq's standard language now in dispute (Issues # 1, 8, 9, 11, 12 on the Arbitration Matrix, Exhibit D) is similar to the language in earlier agreements.

13. EQ denies that it unilaterally changed its interpretation of the provisions. EQ avers the language and the conditioning charges as reflected both in the language and the price sheet in the agreement are legitimate charges authorized by the parties in previous ICAs.

14. EQ admits that EQ billed COI conditioning charges as authorized under their current (expired) ICA.

15. EQ denies the language in the agreement needs to be clarified and avers the language and the associated rates in the price sheet are clear and concise and no further clarification is necessary.

16. EQ denies the conditioning charges have no basis in logic or are not cost justified.

17. EQ denies EQ began charging conditioning charges as any type of penalty. EQ avers during the course of the negotiations for this ICA, EQ also provided COI with two commercial agreements (DSL agreement on 7/18/07 at 10:02 am and again on 11/9/07 at 12:08 pm and a LWS agreement on 12/21/07 at 10:58 am) for execution. This contradicts COI's assertion that EQ is trying to penalize COI in the competitive market.

18. EQ denies the monthly recurring DS1 loop rates should include non-recurring costs for conditioning charges. EQ's DS1 loop rates are TELRIC-based rates, compliant with the FCC rules and orders, and the costs to determine DS1 rates do not include conditioning charges. Not all DS1 loops require conditioning; therefore, Embarq's approach of applying stand-alone, non- recurring charges for conditioning work, only in those instances where the conditioning work is ordered by the CLEC, provides the best matching of costs incurred to costs recovered. This approach is reasonable and consistent with the FCC's rules and requirements for pricing rate elements.

19. EQ has numerous Commission-approved ICAs with other CLECs in OH with the "conditioning" language that COI disputes.

20. COI executed an agreement with Verizon in Ohio in 1999, approved by the Commission, which includes language that states conditioning charges are separate, additional rates from the loop rate (Section 5.3).

21. EQ avers the conditioning charges and language in prior agreements, and in this current arbitrated agreement, are legitimate charges contained within the four corners of the fully executed ICAs and that language is legally binding upon the parties.

22. EQ denies EQ's billing/invoicing is completely contradictory to the public policy mandates of OH Admin Code 4901:1-5-5-7(C) and (D)(1). EQ denies the Minimum Telephone Service Standards govern EQ's relationship with COI.

23. Embarq denies that MTSS rules are appropriate for this arbitration proceeding. However, EQ avers that it provided COI with EQ's price sheets and standard ICA, which contains all the telecommunications services, and rates, offered within the ICA. EQ further attempted to provide cost studies to COI during the course of negotiation in order to validate EQ's loop rates; however COI failed to execute a non-disclosure agreement in order to allow EQ to provide COI with the proprietary cost study supporting EQ's rates. Embarq denies that COI has negotiated in good faith on the issue of whether Embarq's rates are cost-justified.

24. EQ denies that its billing practices violate any Ohio law or rule.

25. EQ denies the Charges, Billing and Payment language creates a disadvantage for COI with regard to EQ's suspending order processing and termination of service. EQ's language (7.2.3 and 7.2.4) allows 45 days after the bill date of nonpayment by a CLEC before EQ could suspend the CLEC's ability to order more services, and 60 days of nonpayment before EQ can terminate services. EQ avers that billing

errors made by both Parties are being resolved under the Dispute Resolution process of the Parties' current ICA and are not appropriate to address in the Petition for this arbitration.

26. EQ denies that EQ allows 30 days from the invoice date before a CLEC is not allowed to order more services due to nonpayment. EQ avers the language in the agreement (Sections 7.3.2 and 7.3.3) clearly states 45 days -- not 30.

27. EQ further avers that to allow a CLEC to continue placing orders for service after 45 days of nonpayment for services already rendered constitutes unjust enrichment for the CLEC, and that 45 and 60 days are more than reasonable amounts of time to render payment for a billing invoice for undisputed charges.

28. EQ avers COI has had its ability to order services suspended under the previous contract timelines of 60 and 90 days due to late payments on two occasions -- March 30 and May 12, 2005. In both instances, once COI made their payment, the suspension was lifted.

29. EQ further avers a number of carriers voluntarily negotiated and executed new ICAs in Ohio, which included the 45/60 day language. The Commission has approved the agreements.

30. EQ denies that enforcing the shorter timeframe before EQ may suspend or terminate service would be unconscionable to any CLEC as the time continues to be reasonable, but in particular, with regard to COI it is not

unconscionable because COI makes weekly payments for undisputed charges.

31. EQ denies that there were a number of provisions regarding security deposits that were resolved between the Parties during the course of negotiations. EQ avers only one provision has been at issue during the course of this negotiation, as reflected by the redlines COI sent to EQ via e-mail on 5/15/07 at 2:51 pm, whereby the only issue in the Security Deposit section of the ICA was Section 37.9.

32. EQ denies that the security deposit requirement whereby EQ will retain the deposit during the term of the agreement and utilize any such monies to make payments on undisputed balances that are past due 30 days is inequitable to COI. This provides an equitable solution for both parties because it allows COI to keep their account current and to continue ordering more services from EQ and also insures EQ receives payment for services rendered. EQ further avers this language was modified from prior agreements due to CLECs' not paying their bills in a timely manner, or worse, going out of business altogether without paying their bill. This language is to protect both parties under the agreement to ensure payments are timely made and that EQ is not left without a remedy for CLECs that do not make timely payments. To require EQ to return a security deposit after 12 months of timely payments for a two-year term agreement has the resulting effect of leaving EQ without any financial guarantee for payments for services rendered for the remaining 12 months of the

agreement term, or longer, if the Parties continue to operate under an expired agreement, as has been the case with COI. EQ avers neither Party will collect interest on the security deposit payment, and denies a security deposit requirement is at the "whim" of EQ. EQ will request a security deposit (see sections 37.7.1-37.7.6) when undisputed balances are more than 30 days past due, CLEC files for bankruptcy protection, an involuntary bankruptcy petition is filed against CLEC and not dismissed after 60 days, when the agreement expires or terminates, or the letter of credit fails to meet the required terms and conditions in the security deposit section or, if the CLEC fails to submit a replacement letter of credit. EQ avers these conditions for requesting a security deposit are patently clear and not at the "whim" of EQ.

33. EQ denies any and all responsibility for COI's prior Chapter 11 reorganization. EQ does not have any financial ownership interest in COI, nor does EQ provide any business oversight in COI's business or financial transactions. EQ avers the allegations made by COI in this paragraph of the Petition are defamatory on their face, unfounded, and completely unrelated to this present arbitration. EQ requests this paragraph be stricken.

34. EQ denies any legal obligation to pay interest on any deposit.

35. EQ admits COI brought a complaint against Embarq, then Sprint, alleging unreasonable billing.

36. EQ admits a Settlement Agreement resulted on the 5th day of June, 2003. EQ avers the Settlement Agreement resolved billing errors by both parties -- not just Embarq (then Sprint). EQ further avers this language is defamatory on its face, misleading, unfounded, and completely unrelated to this arbitration and should be stricken.

37. EQ has numerous ICAs in OH, approved by the Commission, which include EQ's standard Security Deposit language.

38. EQ lacks sufficient information to form a belief as to the truth or falsity of COI's allegations regarding the impact of migrating 11 or more DS1 loops to DS3 loops.

39. EQ denies that it has manipulated the FCC's decision regarding the DS1 cap for both loops and dedicated transport. The DS1 cap is a matter of law established by the FCC and concurred in by this Commission in prior arbitrations. EQ denies that the cap can be adjusted in an arbitration based on EQ specific rates. EQ denies that the rates referred to by COI are the sole basis upon which the FCC established the cap and that they incorporate all information provided in evidence supporting the FCC's decision in that proceeding. EQ denies that the rates of larger carriers, operating in urban areas outside Ohio, are relevant to this issue or assessing the level of EQ's rates. EQ denies EQ's rates for DS1 loops are, or should be, equivalent to any RBOC's rates as implied by COI.

40. EQ denies that EQ is "required" by either FCC or this Commission's rules to have rates approved in a litigated proceeding in order to charge agreed-upon rates in an interconnection agreement as demonstrated by the numerous ICAs in OH, approved by the Commission which include EQ's TELRIC Price List. EQ avers

the parties have executed three prior interconnection agreements, approved by this Commission, for which the rates were not subject to an arbitration prior to this Commission's approving the rates in those agreements. EQ further avers that the rates COI is currently disputing in this arbitration have been approved by this Commission in current/non-expired ICAs with other carriers. EQ avers that if COI orders a service, there is a charge associated with that order. EQ further avers that COI has not negotiated in good faith on the issue of rates being cost-justified. COI has failed to execute a non-disclosure agreement, failed to review EQ's cost study, and failed to suggest one single reason why EQ's costs are not proper.

41. EQ denies that COI's over-simplified version of a rate comparison of EQ's rates for the past three ICAs with EQ is sufficient to demonstrate EQ's rates in the current price sheets are excessive and not cost-justified. EQ avers EQ's cost studies and resulting rates are consistent with 47 CFR 51.501-51.513 (Subpart F- Pricing of Elements) and the OH Commission's Carrier-to-Carrier Rules pertaining to Pricing Standards (Case No. 95-0845-TP-COI). EQ denies COI's claim that EQ is required to have the rates approved by this Commission prior to being permitted to charge them.

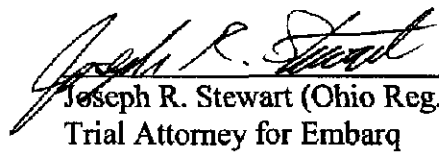
42. EQ denies COI's statement that EQ has not offered supporting information to the rates that are in dispute. COI's own petition contradicts itself. EQ avers that EQ offered to provide COI with the cost studies supporting EQ's rates upon execution of a Non-Disclosure Agreement ("NDA") (due to the

proprietary nature of EQ's cost studies), and provided COI with the NDA on 11/6/2007 at 2:22 pm, which COI never signed in order to receive the cost studies to review. EQ avers COI did not, in good faith, attempt to review EQ's cost studies which justify EQ's rates that COI is disputing. But COI asserts in their Petition that EQ's rates are not justified. EQ avers COI failed to negotiate this issue in good faith, and COI should not be rewarded for this behavior by consuming Commission resources to perform a cost study review simply because COI has chosen to forgo the analysis. COI's statement "their understanding that once an NDA is signed the information will be forthcoming" demonstrates their full awareness of the cost studies' availability. Their refusal to sign the NDA and therefore their self-imposed inability to even proffer any changes to the rates proves COI has not negotiated in good faith.

43. EQ has numerous currently effective ICAs in OH, with the same rates as the ones offered to COI, and approved by the OH Commission.

44. Embarq denies each allegation of the Petition not expressly admitted to be true.

Respectfully submitted,



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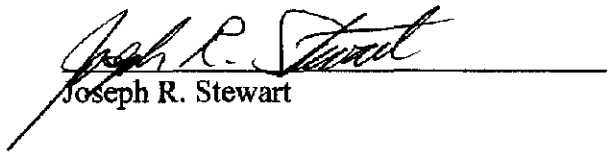
CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Response to Communication Options, Inc. Petition for Arbitration 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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