

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Petition of Intrado Communications)
Inc. for Arbitration Pursuant to Section 252(b) of the)
Communications Act of 1934, as Amended, to Establish) Case No. 07-1216-TP-ARB
an Interconnection Agreement with United Telephone)
Company of Ohio and United Telephone Company of)
Indiana (collectively, “Embarq”))

**AT&T OHIO’S MEMORANDUM CONTRA
INTRADO’S MOTION TO STRIKE ITS REPLY BRIEF**

AT&T Ohio filed a reply brief in this arbitration in support of Embarq because AT&T Ohio, like other Ohio ILECs, is negotiating and expects to arbitrate its own interconnection agreement with Intrado, and a number of issues or arguments may be the same or overlap significantly with those here. Intrado is the first and only provider classified as a Competitive Emergency Services Telecommunications Carrier and the first such carrier to seek an interconnection agreement under 47 U.S.C. § 252, and this therefore is a case of first impression regarding many interconnection issues. AT&T Ohio’s reply brief is in the nature of an *amicus curiae* brief that seeks to provide an additional perspective on some of the novel issues raised by Intrado, based on the law and the evidence already before the Commission. While such briefs may be uncommon, they are by no means unheard of, and nothing in the Commission’s rules prohibits them. The Commission’s final order naturally will deal with the specific arbitration issues and proposed contract language and will be based on the actual record before it. That, however, does not mean it must disregard other perspectives from other relevant and interested observers, particularly on such new and potentially far-reaching issues.

Intrado has moved to strike AT&T Ohio’s brief but provides no legal basis for doing so. Intrado first contends that AT&T Ohio is not a party and has not sought to

intervene in this case, and that any request to intervene would be untimely. Intrado Mem. at 1-2. It is true that AT&T Ohio has not sought to intervene, nor does it seek to become a party, but that does not mean it cannot voice an opinion. AT&T Ohio merely seeks to provide its perspective on some of the key issues in the case, since they present new questions that may also affect other arbitrations or proceedings. That is the common role of an *amicus* brief. The Commission has accepted such *amicus* briefs in various proceedings, including arbitrations under Section 252,¹ and there is no reason to reject AT&T Ohio's brief here. Contrary to Intrado's claim, AT&T Ohio does not seek to broaden or change the issues in any way; it merely seeks to comment on the issues as they have been framed and briefed by the arbitrating parties.

Intrado also contends that "AT&T's Reply Brief would violate the Commission's rules governing arbitration proceedings as well as the construct of the Act." Intrado Mem. at 2. But once again, the rules and 1996 Act contain no such prohibition. Intrado cites Ohio Admin. Code § 4901:1-7-09(B), but that merely says that the Commission will arbitrate only the unresolved issues raised in the petition for arbitration and response. AT&T Ohio does not seek to add new issues or change any of the existing issues. And while Intrado claims there is "no support" for AT&T Ohio's assertions in the petition for arbitration or response, AT&T Ohio's brief deals only with the issues as set forth in the parties' briefs.

In short, AT&T Ohio's brief is not barred by any Commission rule or decision and should be accepted as an additional, interested outsider's perspective on some of the

¹ E.g., *In the Matter of Petition of Time Warner Telecom of Ohio, L.P. for Arbitration With Cincinnati Bell Tel. Co. Pursuant to the Federal Telecommunications Act of 1996 and the Commission's Arbitration Rules*, 1999 Ohio PUC LEXIS 474, at *1-*2 (1999); *In the Matter of the Complaint of WorldCom, Inc., et al. v. City of Toledo*, 2003 Ohio PUC LEXIS 202, at *5 (2003); *In the Matter of the Complaint of WorldCom, Inc., et al. v. City of Dayton*, 2003 Ohio PUC LEXIS 488, at *4 (2003).

key issues in this arbitration. Accepting AT&T Ohio's brief will further the ends of justice in this case.

Respectfully submitted,

AT&T Ohio

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Certificate of Service

I hereby certify that a copy of the foregoing has been served by electronic mail, as noted, and by first class mail, postage prepaid, this 7th day of July, 2008 on the following parties:

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/7/2008 12:30:01 PM

in

Case No(s). 07-1216-TP-ARB

Summary: Memorandum Contra Intrado's Motion to Strike its Reply Brief electronically filed by Jon F Kelly on behalf of AT&T Ohio