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February 2, 2006

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BY FEDERAL EXPRESS

Public Utilities Commission of Ohio
Attention: Docketing Division
180 East Broad Street
Columbus, Ohio 43215-3793

Re: **Motion For Temporary Waiver**
Case No. 04-1785-TP-ORD

Dear Ladies and Gentlemen:

Enclosed for filing are an original and seven (7) copies of the Motion of Evercom Systems, Inc. to Temporarily Waive Section 4901:1-6-23(D)(3) and Evercom's Memorandum in Support thereof in the referenced case.

The undersigned counsel has previously been admitted to practice before the Commission for purposes of this case.

Extra copies of the Motion and Memorandum are enclosed to be stamped "filed" or "received" and returned in the enclosed self-addressed, postage-prepaid envelope.

If there are any questions on this matter, please contact the undersigned counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul C. Besozzi", written over the typed name.

Paul C. Besozzi

Enclosures

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of Motion Of Evercom)
Systems, Inc. To Temporarily Waive) CASE NO. 04-1785-TP-ORD
Section 4901:1-6-23(D)(3) Of The)
Commission Rules Relating To Certain)
Rate Announcements)

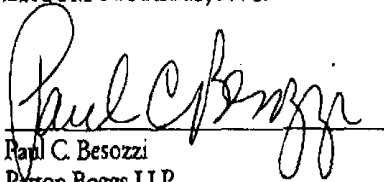
MOTION OF EVERCOM SYSTEMS, INC. TO TEMPORARILY
WAIVE SECTION 4901:1-6-23(D) OF THE COMMISSION'S
RULES RELATING TO CERTAIN RATE ANNOUNCEMENTS

Evercom Systems, Inc. ("Evercom"), in accordance with Section 4901:1-6-6 of the Commission's Rules, hereby moves to temporarily waive the requirements of Section 4901:1-6-23(D)(3) of those rules relating to certain rate announcements. For good cause Evercom seeks a temporary waiver effective February 3, 2006 through and including June 4, 2006.

The good cause basis for granting this Motion is set forth in the attached Memorandum in Support.

Respectfully submitted,

EVERCOM SYSTEMS, INC.

By: 

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MEMORANDUM IN SUPPORT OF
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WAIVE SECTION 4901:1-6-23(D) OF THE COMMISSION'S
RULES RELATING TO CERTAIN RATE ANNOUNCEMENTS

I. INTRODUCTION

Evercom Systems, Inc. ("Evercom") is authorized to provide Inmate Operator Services ("IOS") in the State of Ohio. As such, Evercom is subject to the Commission's recently adopted revised rules relating to rate charges and announcements by providers of IOS.¹ Those revised rules take effect on February 3, 2006.²

Section 4901:1-6-23(D)(3) of the revised rules provides as follows:

All IOS providers must furnish, on all intrastate IOS calls, at the beginning of the call before the end user incurs any charges, immediate and full rate disclosures that quote the actual intrastate price lists rates from all components of the call. However, IOS providers may allow end users an opportunity to affirmatively decline receiving the required quote.

Evercom seeks a temporary waiver of this requirement effective February 3, 2006 through and including June 4, 2006 (i.e., for 120 days) for certain of its inmate calling systems in Ohio. This reasonable additional period is required for Evercom to complete substantive software, and in the

¹ See In the Matter of the Commission's Review of the Rules and Regulations Pertaining to Alternative Operator Services, Including Secured Inmate Facilities Services, Case No. 04-1785-TP-ORD ("IOS Case"), Entry On Rehearing, October 5, 2005.

² IOS Case, Entry, January 4, 2006.

case of some systems hardware, upgrades necessary to comply with the announcement requirement on these systems. Evercom seeks no waiver of any other provision of the rules adopted in the *IOS Case*. Specifically, Evercom has filed the requisite revisions to its price list to ensure its intrastate rates are in compliance with Section 4901:1-6-23(d)(1) and those rates are reflected in its February 3, 2006 tariff filing.

II. STANDARD FOR WAIVER

The standard for granting the waiver requested by Evercom is contained in Section 4901:1-6-06 of the Commission's Rules:

4901:1-6-06 Waivers.

(A) The commission may waive any provision of Chapter 4901:1-6 of the Administrative Code, for good cause shown or upon its own motion.

(B) Any telephone company seeking a waiver(s) of rules contained in this chapter shall specify the period of time for which it seeks such waiver(s), and a detailed justification in the form of a motion filed in accordance with rule 4901:1-12 of the Administrative Code.

(C) All waiver requests must be approved by the commission and will toll any automatic approval time frames set forth in rule 4901:1-6-05 of the Administrative Code.

The commission has held that to satisfy the "good cause" standard a waiver request must be reasonable, narrowly focused and supported by a detailed justification.³ For example, the Commission found good cause existed when providers requested a waiver for additional time to add Ohio relay service instructions and a customer bill of rights to their directories.⁴ The providers

³ *Application of Tel-Save Inc. d/b/a The Phone Company for a Temporary Waiver of Certain Portions of the Local Service Guidelines*, Case No. 97-1727-TP-SLP, 1998 Ohio PUC LEXIS 287, *3-*4 (Mar. 12, 1998) ("We find Tel-Save's request to be reasonable and very narrowly focused. Moreover, we conclude Tel-Save has set forth good cause, with detailed justification for the waiver.") and *Self-Complaint of OCOM Corp. for a Temporary Waiver of Certain Portions of the Local Service Guidelines*, Case No. 97-693-TP-SLF, 1997 Ohio PUC LEXIS 684, *3 (Sept. 11, 1997) ("We find OCOM's request to be reasonable and very narrowly focused. Moreover, we conclude that OCOM has set forth good cause, with detailed justification, and a time frame for the waiver. We conclude that OCOM has met the requirements for a waiver and that the requested waiver is reasonable.").

⁴ *Amendment of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 00-1265-TP-ORD, 2001 Ohio PUC LEXIS 902 (Dec. 6, 2001) (waivers requested by and granted to CenturyTel of

argued and the commission agreed that good cause existed for such a waiver because it took time for providers to be able to make arrangements with their directory publishers to add the additional information to future telephone directories. Likewise, the commission determined that a short delay in the publication of a provider's annual telephone directory due to a change in the publisher of the directory was good cause for a waiver.⁵

III. GOOD CAUSE EXISTS FOR GRANTING THE TEMPORARY WAIVER

Good cause exists in this case because the implementation of the new IOS rule on rate announcements requires substantive modifications to the software, and in some instances the hardware, used in Evercom's inmate calling systems. In some cases, at facilities where Evercom's newest systems have been installed, Evercom has been able to make those software changes in sufficient time to be implemented on February 3, 2006.

However, in approximately 100 Ohio confinement facilities involving Evercom's older inmate calling systems⁶, despite Evercom's diligent efforts since the revised rules were finalized, Evercom requires additional time to complete hardware modifications and the development, testing, debugging and installation of the software upgrades necessary for Evercom to be able to provide separate, distinct rate announcements for interstate rates and intrastate rates.⁷

Ohio, Inc., Verizon North Inc., United Telephone Company of Ohio d/b/a Sprint, Alltel Ohio, Inc. and The Western Reserve Telephone Co. for additional time to bring their telephone directories in compliance with the commission's new telephone directory requirements).

⁵ *Amendments of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 00-1265-TP-ORD, 2006 Ohio PUC I.E.XIS 13 (Jan. 4, 2006) (waiver requested by and granted to Columbus Grove Telephone Company for a two-month extension of the annual telephone directory publication rule so that it may contract with a new directory provider and update its business directory listings).

⁶ These systems are Evercom's Omniphone and CAD/DCM systems that date back to some of the company's earliest involvement in providing IOS in Ohio.

⁷ Evercom is required to make announcements regarding interstate rates under Section 64.710 of the FCC's rules. 47 C.F.R. 64.710.

In the case of the Omniphone systems, Evercom is required to physically disassemble the system so that a new card can be installed to support the upgraded software.

Evercom's technical personnel have been working with independent software vendors to develop the necessary software upgrades. Once software development is completed, the revised software must be certified by Evercom's quality assurance personnel. This certification process applies for each of the varied hardware configurations that are present in the confinement facilities served by these older systems. Once certified, the software must be downloaded into each such system.

Evercom has expended, and continues to expend, substantial resources to effect these hardware and software adjustments as quickly as reasonably possible. Evercom intends to continue the process of rolling out the required announcement capability during the waiver period so that as of June 4, 2006, all of the systems subject to the waiver are providing the requisite announcements.

Evercom takes its compliance responsibilities seriously and its record in Ohio demonstrates that commitment. If requested Evercom is prepared to periodically advise the Commission during the waiver period of its progress in completing the upgrades.

IV. CONCLUSION

Evercom has demonstrated good cause for a temporary, 120 day waiver of the rate announcement requirements of Section 4901:1-23(D)(3) of the Commission's revised IOS rules. Evercom will be meeting all other requirements of those new rules at the confinement facilities that it serves in Ohio. The waiver request is reasonable, narrowly focused and supported by a detailed

justification. There is Commission precedent for the grant of a relatively short-term waiver under such circumstances. Evercom has demonstrated the requisite good cause for the grant thereof.⁸

Respectfully submitted,

EVERCOM SYSTEMS, INC.

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⁸ In similar circumstances the FCC agreed to temporarily waive such a requirement. *In the Matter of Billed Party Preference for InterLATA O+ Calls - TNETIX, Inc. Petition For Clarification And Waiver*, DA 02-1425, Consumer and Governmental Affairs Bureau, June 17, 2002.

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VERIFICATION

I RANDY HOFFMAN, am the V.P. AND G.M. of Evercom Systems, Inc.

("Evercom") and I am familiar with the development and deployment of the hardware and software upgrades necessary comply with the requirements of Section 4901:1-6-23(D)(3) of the rules of the Ohio Public Utilities Commission. I have reviewed the foregoing Motion and Memorandum IN Support of a temporary waiver of the requirements of that Section and the representations concerning Evercom's efforts to meet those requirements and the need for additional time are true and correct.

