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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Amendment of the)
Minimum Telephone Service Standards As) Case No. 00-1265-TP-ORD
Set Forth in Chapter 4901:1-5 of the Ohio)
Administrative Code.)

**MEMORANDUM CONTRA EMBARQ'S APPLICATION FOR WAIVER OF
THE RULES FOR BILLING ITS CUSTOMERS, AS AMENDED,
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION AND SUMMARY

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential telephone customers in the State of Ohio, submits this memorandum contra the Application for Waiver filed by Embarq¹ on June 25, 2007 and the Amendment to the Application filed on July 6, 2007.² The interests of more than 335,000 Embarq residential customers in Ohio could be adversely affected by the outcome of Embarq's Application and the Amendment to be excused from requirements to provide certain information to its customers.³

¹ Embarq is a d/b/a of United Telephone Company of Ohio.

² The Minimum Telephone Service Standards ("MTSS") do not provide a process for responding to waiver requests. Waiver provisions in other rules, however, specify that waiver requests are processed according to Ohio Adm. Code 4901-1-12. See, e.g., Ohio Adm. Code 4901:1-6-06(B). Thus, this Memorandum Contra is being filed according to Ohio Adm. Code 4901-1-12(B).

³ See Embarq's 2006 Annual Report filed with the Commission, Schedule 28.

Embarq seeks a waiver of nearly all portions of Ohio Adm. Code 4901:1-5-15 in order to provide a *summary bill, rather than a detailed bill, to customers who want bills that are less detailed than the rule requires*. Embarq seeks to offer “*simpler, shorter bills than Embarq currently provides.*”⁴

OCC does not object to the concept of summary billing, so long as **customers** control the **format** of the bill they receive. But customers should have billing options that meet their needs **and** provide essential consumer protections. Embarq has not shown how its proposed summary bill would provide customers with the same consumer protections required by the MTSS. In particular, Embarq provides no basis for the Public Utilities Commission of Ohio (“Commission” or “PUCO”) to grant a waiver of:

- that portion of rule 15(A)(3) which requires bills to include the beginning and ending date of the billing period;⁵
- rule 15(A)(9), which requires bills to include an itemization of *and* a brief description of all taxes and surcharges;⁶
- rule 15(A)(10), which requires itemization of all 9-1-1 charges in a clearly identifiable manner;⁷
- rule 15(D), which requires bills to include a statement that local service may not be disconnected for nonpayment of toll charges;⁸
- that portion of rule 15(F) which requires bills to include an annual itemized listing of customers’ basic and optional services, as well

⁴ Application at 1.

⁵ Id. at 2.

⁶ Id. at 3.

⁷ Id.

⁸ Id.; Amendment at 2.

as the amount of any security deposit (including interest) being held on the customer's behalf;⁹ and

- that portion of rule 15(G) which requires bills to include a brief description of the type of service and associated charges provided by a new presubscribed carrier appearing on the bill.¹⁰

These rules provide important consumer protections. The Commission should deny Embarq's waiver request concerning these six rules.

Granting Embarq a waiver of the other provisions included in the Application and the Amendment,¹¹ as evidenced by the sample bills submitted by Embarq, is not objectionable, so long as customers are ultimately made aware of the amount they need to pay to avoid disconnection of local service.¹² It should be stressed, however, that the summary bill must be available to customers **only at their option and at no charge**, and that customers must be allowed to change, as often as they want, the type of bill they receive at no charge. In addition, new customers must be informed that the detailed bill is available to them at no charge. In the event a customer does not express a preference, then the default bill should be the detailed bill.

II. STANDARD OF REVIEW

MTSS waivers may be granted for "good cause shown" or if it can be shown that complying with a provision would impose an unreasonable hardship on the company or

⁹ Application at 3.

¹⁰ Id.

¹¹ Embarq also seeks a waiver of rules 15(A)(4), (A)(5), (A)(6), (A)(7), (A)(8), (B) and (C). These provisions concern the itemization of various charges.

¹² Just five days before submitting this Application, Embarq also in this docket asked the PUCO to relieve Embarq of the obligation to orally tell customers the amount they need to pay in order to avoid disconnection of local service. See Application (June 20, 2007) at 6. OCC joined others in opposing that waiver request on July 9, 2007.

its customers.¹³ Except for the requirement that a hardship waiver be accompanied by a memorandum in support, the MTSS do not specify the form of either type of waiver request. The Commission has not clearly delineated requirements for either the good cause standard or the hardship standard.

The Commission has, however, noted the importance of maintaining the integrity of the MTSS: “The Commission has already determined that these standards are essential to providing Ohio consumers a minimal level of service, and, as a general matter, the Commission is not inclined to grant waiver requests that would have the effect of abrogating the essential minimum level of telephone service available to Ohio consumers.”¹⁴ Thus, the key consideration in examining a waiver request should be the effect of the waiver on “the essential minimum level of service” to the requesting company’s customers.¹⁵

III. ARGUMENT

Embarq cites Ohio Adm. Code 4901:1-4-01(E) as the basis for its Application and the Amendment.¹⁶ That rule, however, is not a waiver provision for the MTSS, or for any Commission regulation. Instead, Ohio Adm. Code 4901:1-4-01(E) contains only a definition of “competitive local exchange carrier” as used in the Commission’s

¹³ Ohio Adm. Code 4901:1-5-02(B)(1); Ohio Adm. Code 4901:1-5-02(D).

¹⁴ *In the Matter of the Application of NOW Communications, Inc. to Offer Resold Local Exchange and Intrastate Interexchange Services*, Case No. 98-1466-TP-ACE, *et al*, Opinion and Order (November 2, 2000) at 58.

¹⁵ The PUCO should also require a detailed justification for the waiver, as is required in the Retail Service Rules. See Ohio Adm. Code 4901:1-6-06(B).

¹⁶ Application at 1; Amendment at 1.

alternative regulation rules. Thus, Embarq has failed to provide a legal basis for its Application and the Amendment.

As a result, it is unclear whether Embarq is seeking a “good cause” waiver or a “hardship” waiver. Neither the Application nor the Amendment mentions either term. In any event, Embarq has failed to make the showings required by the Commission’s MTSS waiver provisions that are discussed in Section II above. Embarq does not explain why waiver of any of the provisions is necessary to provide a summary bill to customers who request it. Instead, Embarq merely states how its summary bill will simplify the itemized charges mentioned in the rule.

The closest Embarq comes to supporting its waiver request is the statement, “Embarq conducted focus groups in Florida and a consistent comment was ‘if the total was about what they expected, then there was no need to have all the details.’”¹⁷ Embarq, however, provides no other details regarding the focus groups. It would be useful to know the composition of the groups by such things as age, race, gender and income, whether they were residential or business customers, the materials used to conduct the focus groups and the questions the groups were asked. It would also be beneficial to know the actual percentage of group members who made the “consistent comment” cited by Embarq, as well as other conclusions reached as a result of the focus groups (e.g., how many thought there should be more detail in bills or who were satisfied with the current bills). In addition, the focus group information is undermined by the fact that the groups were not comprised of a cross-section of Embarq’s **Ohio** residential customers – the customers who will be affected by the waiver request.

¹⁷ Id. at 4.

It is especially unclear why Embarq needs the requested waiver of rules 15(A)(3), (A)(9), (A)(10), (D), (F) and (G) in order to provide simplified bills. These provisions contain important consumer protections, but have little to do with the details of the charges on the bill. Granting the waiver would weaken these consumer protections and would abrogate the essential minimum level of telephone service that the PUCO expects Embarq and other companies to make available to their customers.

A. The Six MTSS Provisions Discussed Above Contain Important Information That Should Be on All Subscriber Bills.

The six provisions noted above considerably enhance the consumer protections of the MTSS. The requirement in rule 15(A)(3) that bills include the beginning and ending date of the billing period give consumers much-needed information regarding the term of their service. This is particularly important for consumers who discontinue service in the middle of a billing period and need to know the prorated portion of monthly service that they would owe Embarq.

Rules 15(A)(9) and (A)(10), which require bills to include an itemization of and a brief description of all taxes and surcharges, help consumers know the source of increases in taxes and surcharges on their bills. Customers will be better able to know the purpose(s) for such increases and, if desired, to whom to complain.

Rule 15(D) helps notify customers that their local service may not be disconnected for nonpayment of toll charges. In adopting this MTSS requirement a decade ago, the Commission recognized that, as subscriber bills increasingly include regulated and nonregulated services, consumers increasingly need to know that nonpayment of nonregulated services would not affect continuation of their local service:

The Commission finds that this neutral statement is especially critical as companies become one-stop providers of various

nonregulated services in addition to telecommunication services and their customers receive bills for nonregulated and regulated toll and local service on the same bill as nonregulated nontelecommunication services, such as cable television charges. However, the Commission also acknowledges the arguments given by the Telecommunications Resellers Association that these requirements may be burdensome to small resellers which serve customers in more than one state. However, the Commission strongly believes that it is imperative that Ohio's consumers have such information on the bill. The educational benefit bestowed upon Ohio consumers as a result of including these statements on customers' bills clearly outweighs the LEC's burden to include such information as many additional nonregulated services may appear on customers' bills in the future.¹⁸

Customers who do not know that continuation of their local service is protected from nonpayment of toll could be coerced into paying more than necessary to avoid local service disconnection.

In including the annual itemized listing of customers' basic and optional services in rule 15(F), the Commission provided customers with an important protection against slamming (i.e., the switching of a customer's service to another provider without the customer's consent). In addition, customers will be better able to determine on a yearly basis whether the services they pay for meet their needs. Providing this information to customers on one bill a year would not thwart the purpose of the summary bill.

Customers should also be able to determine the amount of any security deposit and interest that Embarq would owe them upon discontinuance of service, or whether Embarq is holding a deposit in error. Rule 15(F) gives customers this needed information.

¹⁸ *In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 96-1175-TP-ORD, Entry on Rehearing (September 11, 1997) at 31.

Rule 15(G) is an important anti-slamming and anti-cramming provision.¹⁹ By requiring bills to include a brief description of the type of service and associated charges provided by a new presubscribed carrier appearing on the bill, customers will be better able to determine whether they authorized any of the services being provided by the new carrier. Customers should not have to go to Embarq's website in order to determine whether they have authorized the services that show up on their bills.

B. Granting the Waivers Would Abrogate the Essential Minimum Level of Telephone Service to Embarq's Ohio Customers.

The provisions discussed above are an integral part of the Commission's consumer protections. All customers – regardless of the billing format that they prefer – need to know their rights concerning telephone service, as well as whether they have authorized the services showing up on their bills. They also need to know whether the services they are paying for meet their needs.

Granting Embarq a waiver of the six provisions discussed above would abrogate the essential minimum level of service for Embarq's customers. The Commission should deny Embarq's request concerning these provisions.

C. Embarq's Waiver Request Concerning the Six Provisions Is Not in the Public Interest.

The Commission has recognized numerous public benefits from the six rules discussed above. The Commission should not allow these benefits to erode.

Such erosion would occur if the Commission were to bend to Embarq's wishes. Customers would be unaware that their local service could not be disconnected for nonpayment of toll. Customers would also be unable to readily determine whether their

¹⁹ Cramming is the adding of an unrequested feature to a customer's service without the customer's consent.

service meets their needs, or whether they are being billed for authorized services. They also would not be able to readily identify why taxes and surcharges increased, or how much they owe to Embarq if discontinuing service in the middle of a month, or whether Embarq was properly holding a deposit for them.

Granting Embarq a waiver of the six provisions discussed above would not serve the public interest. The Commission should deny the Application and the Amendment as they apply to the six provisions.

IV. CONCLUSION

Embarq has failed to show good cause for the requested waiver of rules 15(A)(3), (A)(9), (A)(10), (D), (F) and (G). In addition, Embarq has not shown that it suffers an unreasonable hardship in complying with the rules for which the waivers are sought. Indeed, granting Embarq a waiver of these six provisions would impose an unreasonable hardship on Embarq's customers, due to the abrogation of essential consumer protections. The Commission should deny the waiver requests regarding these six rules, in the interest of more than 335,000 Ohio residential customers who subscribe to Embarq's telephone service.

The following images were scanned as received

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Embarq's Application for Waiver of the Rules for Billing Its Customers, as Amended, by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons on the attached list, on this 13th day of July 2007.


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