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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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. )

In the Matter of the Amendment of the )  
Minimum Telephone Service Standards As ) Case No. 05-1102-TP-ORD  
Set Forth in Chapter 4901:1-5 of the Ohio )  
Administrative Code. )

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MEMORANDUM CONTRA EMBARQ'S APPLICATION FOR WAIVER  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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December 3, 2007

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<sup>2</sup> See Application at 1-2.

request to be excused from requirements to provide certain information on customer bills could adversely affect the interests of more than 335,000 residential customers in Ohio.<sup>3</sup>

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 will apparently advise existing customers that they can receive the summary bill at their option and at no charge, and that they will be allowed to change, as often as they want and without charge, the type of bill they receive.<sup>4</sup> The Public Utilities Commission of Ohio (“Commission” or “PUCO”) should ensure that new Embarq customers also receive this information. If a customer does not express a preference, the default bill should be the detailed bill.

The Application is similar to one Embarq filed in June of this year.<sup>5</sup> As then, Embarq would omit from summary bills call detail and itemization of charges that the current MTSS requires. Now, however, Embarq asks to be excused from requirements of the new MTSS that will become effective on January 1, 2008, as well as current MTSS requirements that will be modified or eliminated in the new MTSS.<sup>6</sup>

As discussed in Section III below, Embarq does not explain why a waiver of the billing requirements in current MTSS is necessary, given that Embarq must comply with those requirements for only 47 more days after the Application was filed. It is also unclear why Embarq needs a waiver of new MTSS Rules 7(B)(1) and 7(B)(2). In

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<sup>3</sup> See Embarq’s 2006 Annual Report filed with the Commission, Schedule 28.

<sup>4</sup> See Application at 2.

<sup>5</sup> Case No. 00-1265-TP-ORD, Application for Waiver (June 25, 2007) (“June 25 Application”); Amendment to Application for Waiver (July 6, 2007). After OCC filed a memorandum contra that application on July 13, 2007, Embarq filed a request to withdraw the waiver application on July 16, 2007. Embarq’s request was granted by Entry issued July 25, 2007.

<sup>6</sup> See Application at 1.

addition, Embark's proposal lacks some important consumer protections found in new MTSS Rules 7(B)(5) and 7(B)(6).

## **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 its customers.<sup>7</sup> 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 PUCO 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."<sup>8</sup> Thus, the waiver's effect on "the essential minimum level of service" to the company's customers is a key consideration in examining a waiver request.

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<sup>7</sup> Ohio Adm. Code 4901:1-5-02(B)(1); Ohio Adm. Code 4901:1-5-02(D).

<sup>8</sup> *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.

### **III. ARGUMENT**

#### **A. Embarq Does Not Identify a Standard for Reviewing Its Application.**

As with its earlier waiver request, Embarq cites Ohio Adm. Code 4901:1-4-01(E) as the basis for its Application.<sup>9</sup> 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 alternative regulation rules. Thus, Embarq has failed to provide a legal basis for its Application.

It is unclear whether Embarq is seeking a “good cause” waiver or a “hardship” waiver. The Application does not mention either term. In any event, Embarq has failed to make the showings required by the MTSS waiver provisions that are discussed in Section II above. Embarq does not explain why waiver of some billing rules is necessary to provide a summary bill to customers who request it. Instead, Embarq merely states that its summary bill “would conflict with several of the rules in the OAC.”<sup>10</sup>

As with its June waiver request, the closest Embarq comes to supporting its latest Application is the statement, “Embarq conducted focus groups and a consistent comment was ‘if the total was about what they expected, then there was no need to have all the details.’”<sup>11</sup> Embarq, however, provides no details regarding the focus groups.

In order for the Commission to determine the validity of the “consistent comment,” Embarq should provide to the PUCO staff and OCC information regarding

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<sup>9</sup> Application at 1.

<sup>10</sup> Id. at 2.

<sup>11</sup> Id. at 4.

the composition of the focus groups by such things as age, race, gender, income and whether they were residential or business customers. Embarq should also provide the materials used to conduct the focus groups, the questions the groups were asked, the actual percentage of group members who made the “consistent comment” cited by Embarq and 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). Also, the “consistent comment” would be undermined if the focus groups were not comprised of a cross-section of Embarq’s Ohio residential customers – the customers who would be affected by the waiver. In its June waiver request, Embarq stated that focus groups in Florida made the same comment, word for word, as the “consistent comment” cited in the current Application.<sup>12</sup>

Waiver requests should not be granted without proper support. The Commission should require Embarq to explain more fully why waiver of the MTSS billing rules is necessary for the Company to provide summary bills to customers.

**B. Embarq Should Not Be Granted a Waiver of the Current MTSS.**

Embarq’s Application groups together rules from both the current MTSS and the new MTSS, and provides a common explanation regarding how it intends to include information required by those rules on the summary bill. In most cases the current and the new rules require different things. For example, regarding its proposed treatment of the information required by current Rule 15(A)(7), Embarq states that it “will not itemize nonrecurring, fractional, and nonbasic service charges. These charges will be included in

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<sup>12</sup> See June 25 Application at 4.

the Embarras Local summary on the bill.”<sup>13</sup> But Embarras includes in that discussion Rule 7(B)(2) of the new MTSS, which states that bills must include a “brief, clear, accurate description of all services rendered and charges due, including but not limited to current charges, past due amounts, late fees, and credits.” Embarras should be required to follow new Rule 7(B)(2).

It is unclear why Embarras would need a waiver of the current MTSS billing rules named in the Application. The current billing rules will no longer be in effect after January 1, 2008; they will expire only 47 days after the Company filed its Application. Thus, a waiver of the current MTSS makes little sense, especially since the Commission likely will not act on the Application until after Embarras has mailed its last bills under the current MTSS.

In any event, Embarras should not be granted a waiver of five provisions in the current MTSS billing rules – Rules 15(A)(9), 15(A)(10), 15(D), 15(F) and 15(G) – that provide important consumer protections. Rules 15(A)(9) and (A)(10), which require bills to itemize and briefly describe all taxes and surcharges, help customers know the source of increases in taxes and surcharges on their bills. Customers thus are 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.<sup>14</sup> In adopting this 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

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<sup>13</sup> Application at 3.

<sup>14</sup> Embarras acknowledges that this is not required by the new MTSS. *Id.*



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.<sup>15</sup>

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),<sup>16</sup> 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. The rule also allows customers 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.

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<sup>15</sup> *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.

<sup>16</sup> Embarq acknowledges that this is not required by the new MTSS. Application at 3.

Providing this information to customers on one bill a year would not thwart the purpose of the summary bill.

Rule 15(G) is an important anti-slamming and anti-cramming provision that is consistent with R.C. 4905.73 and 4905.74.<sup>17</sup> 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,<sup>18</sup> 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.

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 that appear on their bills. They also need to know whether the services they are paying for meet their needs.

Granting Embarq a waiver of the five 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. The Commission Should Ensure That Embarq's Summary Bill Provides Necessary Consumer Protections.**

As noted above, Embarq's waiver request groups together rules from the current MTSS and the new MTSS that often do not contain the same requirements. Thus, it is difficult to determine why Embarq is seeking a waiver of several billing requirements in

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<sup>17</sup> Cramming is the adding of a feature to a customer's service without the customer's consent.

<sup>18</sup> Embarq acknowledges that this is not required by the new MTSS. Id.

the new MTSS and how the Company intends to include some information in its summary bills. Although summary bills may be useful to, and even desired by, some consumers, the Commission should ensure that summary bills contain all information necessary to protect consumers. An examination of the sample bills contained in the Application shows that some consumer protections are lacking.

Apparently, Embarq is seeking a waiver of four portions of the new MTSS billing rules: Rules 7(B)(1), 7(B)(2), 7(B)(5) and 7(B)(6). These rules provide:

(B) Telecommunications provider's bills shall accurately identify all charges, fees, and taxes so they are clear and not misleading and consistent with the requirements of 47 C.F.R. 64.2401, as effective on the date referenced in paragraph (F) of rule 4901:1-5-02 of the Administrative Code. Bill content shall include the following information:

(1) The telecommunications provider's name and toll-free telephone number. For customers accessing their bills only by e-mail or internet, the telecommunications provider may comply with this requirement by providing an e-mail or web site address on the bill. If more than one telecommunications provider or other company utilizes the bill, the customer must have adequate information to contact the other providers and companies on the bill. Any charges must be separated by service provider and company.

(2) A brief, clear, accurate description of all services rendered and charges due, including but not limited to current charges, past due amounts, late fees, and credits.

...

(5) Call detail, provided free of charge, regarding the calls made and minutes used, if exceeding the amount allowed in a package.

(6) An itemized list of taxes and government-mandated surcharges, grouped and labeled in a separate area of the bill reserved only for those charges.

Embarq, however, may also be seeking waiver of Rules 7(B)(4), 7(B)(5) and 7(B)(7); Embarq's Application twice refers to "this rule and all the subparts...."<sup>19</sup>

Rules 7(B)(4), 7(B)(5) and 7(B)(7) convey important information that should be included on the bill. Rule 7(B)(3) requires bills to include "[t]he customer's name, billing address, and telephone or account number(s)." Rule 7(B)(4) requires that bills include "[t]he date the bill was issued, the beginning and end dates for which the service was provided and the date the payment is due." And Rule 7(B)(7) requires that bills include "[a] statement that customers with bill questions or complaints should contact the telecommunications provider first," as well as specified text with PUCO and OCC contact information. Indeed, the PUCO just refined its requirement for PUCO and OCC contact information to appear on the bills that utilities send to Ohio consumers.<sup>20</sup> If Embarq is in fact seeking a waiver of Rules 7(B)(4), 7(B)(5) and 7(B)(7), its request should be denied.

It is not readily apparent why Embarq needs a waiver of Rule 7(B)(1). Regarding this rule, Embarq states that it "will summarize regulated competitive telecommunications service charges by provider but will not detail the charges on the bill," that "[c]harges for nonregulated services will appear in summary on the bill; however, they will not be itemized," and that "[a]ll the detailed information required by this rule and all the subparts will be summarized in the Embarq Local category on the summary bill."<sup>21</sup> Except for requiring that bills include the provider's name and toll-free

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<sup>19</sup> Id.

<sup>20</sup> *In the Matter of the Amendment of Certain Rules to Revise Language Requirements on Utility Bills and Other Documents*, Case No. 07-1042-AU-ORD, Finding and Order (November 30, 2007).

<sup>21</sup> Application at 3.

number, however, Rule 7(B)(1) requires no detailed information to be placed on bills. The rule only requires that “the customer must have adequate information to contact the other providers and companies on the bill” and that “[a]ny charges must be separated by service provider and company.”

The sample summary bills attached to the Application in Exhibits A and B both separate the charges on the bill by service provider. The sample summary bill in Exhibit A, however, does not provide a separate telephone number for Dish Network, although the sample summary bill in Exhibit B does include a Dish Network customer service number. Thus, the sample summary bill in Exhibit A fails to give customers adequate information to contact Dish Network.

Similarly, it is not clear why Embarq’s proposed summary bill cannot provide “[a] brief, clear, accurate description of all services rendered and charges due, including but not limited to current charges, past due amounts, late fees, and credits,” as required by Rule 7(B)(2). In addressing this rule, Embarq states that it “will include all of the information required by this rule but will not identify it individually on the summary bill” and that the Company “will not itemize nonrecurring, fractional and nonbasic service charges. These charges will be included in the Embarq Local summary on the bill.”<sup>22</sup> As noted in Section III.A., Rule 7(B)(2) does not require the itemization of charges described by Embarq; the rule requires only a brief, clear and accurate description of the services rendered and the charges that are due.

The descriptions in the summary bill found in Exhibit B are preferable to those found in the summary bill in Exhibit A. Other than noting that the customer has “Embarq

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<sup>22</sup> Id.

Basic Home Phone w/Voicemail” service and entertainment service from Dish Network, the Exhibit A summary bill provides customers with no detail concerning all the charges on the bill. The Exhibit B summary bill, however, lists the components of the basic service, states that the customer has unlimited long distance service and the optional Lineguard service, notes that the internet service is “High-Speed” Internet, and gives more detail about the Dish Network service. This information is important for customers to ensure that the service they are paying for is actually the service they want or need.

As for the charges specifically mentioned in Rule 7(B)(2), the Commission should ensure that current charges, past due amounts, late fees, and credits are properly separated on a summary bill so that customers are aware of the components of the amount that is due. Under Rule 10(B) of the new MTSS, basic service cannot be disconnected if a partial payment is sufficient to cover the provider’s tariffed rate for stand-alone basic plus taxes and government-mandated surcharges. Thus, a customer must be able to determine on a bill the amount that must be paid to avoid disconnection. Because the summary bills included with Embarq’s Application do not address past due amounts, late fees and credits, it is difficult to ascertain whether Embarq’s proposal adequately protects consumers from disconnection.

Rule 7(B)(5) requires bills to include “[c]all detail, provided free of charge, regarding the calls made and minutes used, if exceeding the amount allowed in a package.” Concerning this rule, Embarq states that it “will not provide itemization of local extended area service calls. Any usage-sensitive local charges will be included in the Embarq Local summary bill.”<sup>23</sup> Further, Embarq states that “[a]ll the detailed

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<sup>23</sup> Id.

information required by this rule and all the subparts will be summarized in the Embark Local category on the summary bill” and that “[d]etail of toll charges required by this rule and all the subparts will not appear on a summary bill.”<sup>24</sup>

Although OCC does not object to a summary bill that does not contain call details, so long as the call details are provided free of charge upon request, summary bills should at least inform customers if they have exceeded the amount allowed in a package. In such instances, customers are likely to be charged for extra minutes at a much higher rate than the rate included in the package. Customers must be made aware when they are being charged for exceeding package limits so they may better control their accounts and, if necessary, dispute the additional charges.

Rule 7(B)(6) requires that bills contain “[a]n itemized list of taxes and government-mandated surcharges, grouped and labeled in a separate area of the bill reserved only for those charges.” Embark states that “[t]axes and surcharges will be listed separately, but will not be itemized with a description” and that “9-1-1 charges are included in the summary of surcharges and fees, but are not separately identified.”<sup>25</sup>

Once again, the summary bill in Exhibit B is preferable to the summary bill in Exhibit A for providing customers information regarding the taxes and surcharges they will pay. The summary bill in Exhibit A (at page 3) merely identifies taxes and surcharges by types of services (i.e., Local and Optional Services, Long Distance and Entertainment). Pages 5 and 6 of the summary bill in Exhibit B, however, lists taxes and surcharges by their origin (e.g., federal, state) or their purpose (e.g., emergency 911,

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<sup>24</sup> Id.

<sup>25</sup> Id.

interstate access, telecommunications relay), and provides a brief description of the tax or surcharge. This information helps customers understand the components of their bill; thus, they are better informed about what they are paying for.

Embarq has not shown good cause for the requested waiver of Rules 7(B)(1) and 7(B)(2) of the new MTSS. Granting Embarq a waiver of these provisions would abrogate the essential minimum level of service for Embarq's customers. The Commission should deny Embarq's request concerning these provisions. In addition, the Commission should require that Embarq's summary bills include the account details found in the summary bill in Exhibit B, as discussed above.

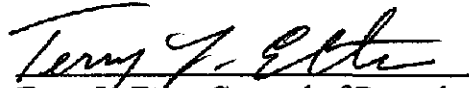
#### **IV. CONCLUSION**

Embarq has failed to show good cause for the requested waiver of the current MTSS or of Rules 7(B)(1) and 7(B)(2) of the new MTSS. 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 the current rules, and Rules 7(B)(1) and 7(B)(2) of the new MTSS, would abrogate essential consumer protections found in both the current MTSS and the new MTSS. In the interest of more than 335,000 Ohio residential customers who subscribe to Embarq's telephone service, the Commission should deny the Application as it applies to the current MTSS and Rules 7(B)(1) and 7(B)(2) of the new MTSS. The Commission should also require that Embarq's summary bills contain the detail found in the sample summary bill included in Exhibit B to the Application, and that Embarq make new customers aware of all billing options.



Respectfully submitted,

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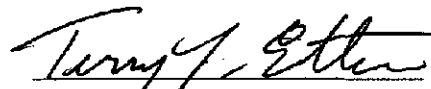


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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra Embarq's Application for Waiver 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 3<sup>rd</sup> day of December 2007.



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