

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Doylestown)
Telephone Company for a Waiver of Edge-Out)
Access Rate Reduction Requirements)

Case No. 08-0117-TP-WVR

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**MEMORANDUM CONTRA AND REQUEST FOR HEARING OF UNITED
TELEPHONE COMPANY OF OHIO DBA EMBARQ TO DOYLESTOWN'S
WAIVER APPLICATION**

I. INTRODUCTION

Doylestown Telephone Company ("Doylestown") has requested a waiver of certain switched access rate reductions required by the Commission's August 22, 2007 Opinion and Order in PUCO Case No. 06-1344-TP-ORD ("Carrier-to-Carrier Docket").

Doylestown is seeking a permanent waiver of Rule 4901:1-7-14(D) ("Access Cap Rule") which requires ILECs operating outside their service area to cap their rates at the current rates of the ILEC providing service in the CLEC's service area, for the termination and origination of intrastate switched access traffic. Doylestown is seeking a permanent waiver of the rule for Embarq's Rittman and Marshallville exchanges. Doylestown makes several arguments in support of its waiver request. Doylestown argues that:

1. The new requirement is inconsistent with Doylestown's edge-out regulatory authority; and
2. Compliance with the new requirement is not economically feasible.

Embarq will show below that neither of these claims justifies a permanent waiver.

And the Commission should not grant any waiver without conducting a hearing to test the validity of Doylestown's factual claims.

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II. ARGUMENT

A. Doylestown's waiver request should be denied because it would perpetuate the unfair competitive advantage Doylestown has when competing with Embarq.

Because Doylestown has the ability to charge unreasonably high access rates in the Embarq exchanges that Doylestown has edged-out into, Doylestown has a significant (and unfair) competitive advantage. This advantage is not justified by legitimate competitive reasons, but instead results from Doylestown's ability to charge abnormally high access rates.

The following tables demonstrate the unfair competitive advantage Doylestown enjoys because of its access rates.

Table 1		
Local Exchange Access Line Rates	R1	B1
Doylestown	\$ 9.05	\$ 18.65
Embarq's Rittman	\$ 17.60	\$ 43.45
Embarq rate as a percent of Doylestown	194.48%	232.98%
Embarq's Marshallville	\$ 16.05	\$ 36.80
Embarq rate as a percent of Doylestown	177.35%	197.32%

Table 2		
Intrastate Access Rates	Doylestown ¹	Embarq ²
Originating CCL	\$.01500	\$.00
Terminating CCL	\$.04280	\$.00
Doylestown rate as a percent of Embarq	Incalculable	
Local Switching	\$.017105	\$.003644
Doylestown rate as a percent of Embarq	469.40%	

Because of its excessive access charges, Doylestown is able to charge slightly more than half Embarq's rate for residential local service in the two exchanges. For single-line business rates, the unfair advantage is even more significant. Embarq's business rate in the Rittman exchange is almost two and one-half times as great as

¹ For Originating and Terminating CCL see Doylestown Tariff PUCO No. 7 Section 8A Original Sheet No. 14. For Local Switching See NECA Tariff FCC No. 5 43rd Revised Page 17-11 Rate Band 5

² For Local Switching See Embarq Tariff FCC No. 1 Section 6.8.3 pages 6-516 & 6-517

Doylestown's. In the Marshallville exchange, Embarq's rate is almost exactly twice as high as Doylestown's. It is simply unfair to allow Doylestown this unfair competitive advantage, subsidized by its improperly high access rates.

From 2003 to 2007, the Universal Service Administration Company ("USAC") issued payments to Doylestown ranging from over \$340K to over \$465K. In 2006 that disbursement amount was \$451,128.00. Support from the federal USF will continue in 2008 for Doylestown.³ According to Doylestown, 67% of Doylestown's intrastate revenues are derived from access charges.⁴ These two forms of subsidy accounted for over 85% of Doylestown's revenue streams in 2006. At this level of subsidy, Doylestown has no incentive to change its basic local service rates. The inflated access rates and the USAC payments are subsidizing Doylestown's local service rates. This puts Embarq at an unfair competitive disadvantage in competing for customers. The Commission recognized this unfairness and adopted the new carrier-to-carrier rules to provide parity between competing companies by requiring small LECs to phase-in to the access rates of the competing ILEC. The Commission should stand by that decision and deny Doylestown's application.

B. The alleged inconsistency with Doylestown's edge-out authority does not justify a waiver.

Doylestown argues that the new rule is inconsistent with Doylestown's edge-out authority.⁵ Doylestown claims inconsistency would result if Doylestown were required to charge lower access rates for edge-out customers than it charges in its own ILEC territory.⁶ But that argument must fail because it proves too much.

³ See USAC Disbursement Data <http://www.universalservice.org/hc/tools/disbursements/default.aspx> also see USAC reports HC05 and HCO1 <http://www.universalservice.org/about/governance/fcc-filings/2008/quarter-2.aspx>

⁴ Redacted Application of Doylestown Telephone Company for a Waiver of Edge-Out Access Rate Reduction at 3

⁵ Doylestown Application at 5, 6.

⁶ *Id.* at 6.

To Embarq's knowledge, no ILEC that was permitted to edge-out was required to cap its access charges at the level of the ILEC into whose territory it was edging out. When it adopted the new Access Cap Rule, the Commission was surely aware of this. Thus, to the extent that the new rule requires a capping of access rates in the edge-out territory, it differs from the edge-out authority for all ILECs permitted to edge-out. Therefore, if this inconsistency were sufficient to justify a waiver, the Commission would never have adopted the new Access Cap Rule.

Furthermore, Doylestown has the ability to resolve any inconsistency. As it implements the required reduction in its access rates in the edge-out territory, Doylestown could lower access rates in its incumbent territory to the same extent. And Doylestown could offset those reductions by increasing its local rates in both the edge-out exchanges and in its incumbent territory. That would result in Doylestown's charging the same rates to all customers.

C. Doylestown's claimed economic infeasibility does not justify a waiver.

Doylestown claims that complying with the rule is not economically feasible for two reasons, a dramatic undermining of Doylestown's investment and the costs to make billing changes.⁷ Neither of these arguments is persuasive.

Because Embarq has been able to review only Doylestown's redacted version of its waiver request, Embarq is not presently able to discuss Doylestown's quantification in detail. But Doylestown's claim that compliance with the new rule will undermine existing investment is unpersuasive because it is based on a faulty premise.

Doylestown claims that compliance with the new rule will reduce, at the end of the three year phase down, the return from outside investment.⁸ Without access to the

⁷ Id. Of course Doylestown can avoid the claimed expensive billing changes by reducing access rates in both the edge-out exchanges and its incumbent exchanges.

⁸ Id at 7.

underlying data, Embarq is unable to say whether Doylestown's analysis is correct. Presumably the new return is at a level that Doylestown will argue is too low. But the faulty premise upon which Doylestown's argument rests is that Doylestown somehow was, or should be, guaranteed a particular return on investment. That is simply not the case, particularly when Doylestown voluntarily chose to edge-out and compete.

As Doylestown is well aware, the Commission has been examining the level of intrastate access charges for many years. In fact, a generic case to analyze intrastate access charge levels has been pending since the year 2000.⁹ In the Access Charge Investigation, the Commission, by Entry dated April 27, 2000, sought comments from both large and small Ohio ILECs regarding modification of intrastate access charges. Therefore, Doylestown was on notice before it edged out (and now for nearly eight years) that the Commission might require a reduction in Doylestown's intrastate access charges. It is therefore incorrect for Doylestown to suggest that it somehow detrimentally relied upon a certain level of access charges that it would be permitted to assess for perpetuity when it decided to edge-out. It is more appropriate to view Doylestown as having assumed the risk, when it developed its business plan, that access charges might decline in the future.

The Commission essentially rejected the argument Doylestown now makes when it denied the application for rehearing filed by 01 Communications Corp. in the Carrier-to-Carrier docket. 1 Communications objected to the Access Cap Rule by claiming that it would require CLECs to charge below cost access rates and will harm competition by preventing CLECs from recovering their costs.¹⁰

The Commission rejected these arguments noting that the FCC had rejected identical arguments made by CLECs, concluding that CLECs remain free to recover from

⁹ PUCO Case No. 00-127-TP-COI ("Access Charge Investigation")

¹⁰ Carrier-to-Carrier Docket, Entry on Rehearing (October 17, 2007) at 15.

their end-users any higher costs that they incur in providing access services. The same is true for Doylestown. Doylestown remains free to seek Commission approval to raise its local rates in both its edge-out exchanges and its incumbent territory. Though Doylestown may resist this suggestion, it is nonetheless appropriate. Reducing Doylestown's access charges will eliminate (or at least reduce) the unfair competitive advantage Doylestown enjoys. That unfair competitive advantage allows Doylestown to charge local rates approximately half of Embarq's. There is no reason to perpetuate such inequity.

D. Granting a waiver to Doylestown is inconsistent with Commission policy regarding access charges.

Granting a waiver to Doylestown is contrary to intrastate access charge policies the Commission has previously articulated. For example, nearly seven years ago, the Commission required certain large Ohio ILECs to reduce their intrastate access rates to mirror the interstate rates that resulted from the CALLS order.¹¹ In support of that action, the Commission noted that reducing intrastate access charges would result in more efficient competition.¹² That is also true here. If Doylestown is required to cap its intrastate access rates at the level of Embarq's rates, more efficient competition will result. Conversely, granting the waiver would perpetuate the inefficient and unfair competitive advantage Doylestown currently enjoys. And requiring Doylestown to reduce its access rates is consistent with the Commission's recent comments to the FCC in CC Docket No. 01-92 (filed October 25, 2006) in which the Commission stated that "reductions in intrastate access rates served the public good."

E. The Commission should conduct a hearing on Doylestown's waiver request.

¹¹ PUCO Case No. 00-127-TP-COI, Opinion and Order (January 11, 2001) at 18.

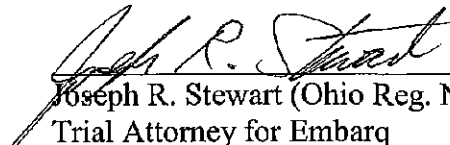
¹² Id at 16.

In its waiver application, Doylestown makes a number of factual claims regarding revenues, costs, and return on investments. Doylestown has redacted the particular numbers that Doylestown claims support its application. Because Doylestown's waiver request relies upon quantitative claims regarding costs, revenues, etc., Embarq submits that it is appropriate to test those claims in a hearing. Embarq should be granted intervention, after which Embarq will engage in discovery to see if Doylestown's allegations are true. Embarq urges the Commission not to consider or grant the waiver application until Doylestown has been required to prove the economic hardship it alleges.

III. Conclusion.

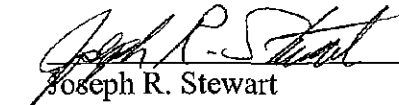
The Commission should deny Doylestown's waiver application. The fact that Doylestown has enjoyed an unfair competitive advantage for years is no reason to perpetuate it. Doylestown cannot legitimately claim to have justifiably relied on the Commission's never reducing access charges. And whether compliance with the new requirement is not economically feasible must be tested in an evidentiary hearing.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Memorandum Contra was e-mailed or served via first class mail, postage prepaid this 26th day of February 2008 to the persons listed below.



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