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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO RECEIVED-DOCKETING DIV
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PUCO

In the Matter of the Application of)
Doylestown Telephone Company for a) Case No. 08-117-TP-WVR
Waiver of Edge-Out Access Rate)
Reduction Requirements.)

**INITIAL COMMENTS ON THE APPLICATION
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

On February 8, 2008, Doylestown Telephone Company (“Doylestown”) filed with the Public Utilities Commission of Ohio (“PUCO or “Commission”) an application seeking a waiver of Ohio Adm. Code 4901:1-7-14(D). That rule requires that Doylestown reduce its intrastate access charges to the level of the charges imposed by United Telephone Company of Ohio dba Embarq (“Embarq”), in the Embarq Rittman and Marshallville exchanges where Doylestown is competing as an “edge-out” company. Doylestown was granted “edge-out” authority -- edging out from Doylestown’s own incumbent local exchange company (“ILEC”) exchange to provide service in the adjacent Embarq ILEC exchanges -- in 2001.¹ Pursuant to the Commission’s order in the case adopting Ohio Adm. Code 4901:1-7-14(D), Doylestown would be required to reduce its

¹ *In the Matter of the Application of Doylestown Telephone Company for Authority to Expand its Service Area and for Waiver of the Commission’s Rules Regarding Local Competition in Ohio, Case No. 01-568-TP-UNC, Finding and Order (April 25, 2001).*

access rates to the level of Embarq's (in the Embarq exchanges) over a period of three years beginning in August 2008.²

On February 26, 2008, Embarq filed a "Memorandum Contra and Request for Hearing" on Doylestown's application. Embarq argued that Doylestown has an unfair competitive advantage over Embarq; that there is no inconsistency with the Commission's grant of edge-out authority; that the impact of the reductions on Doylestown does not justify the waiver³; and that granting the waiver would be inconsistent with the Commission's access charge policy. The bottom line proposal from Embarq is that Doylestown should "increase its local rates in both the edge-out exchanges and in its incumbent territory."⁴

On March 6, 2008, Doylestown filed its memorandum contra Embarq's motion to intervene and reply to Embarq's memorandum contra the motion for waiver. Doylestown also argued that a hearing is not necessary.

The Office of the Ohio Consumers' Counsel ("OCC") is the state agency that represents Ohio's residential utility consumers. OCC has moved to intervene in this case to protect the interests of Doylestown's residential customers (both in the Doylestown incumbent territory and in the edge-out areas) and the interests of Embarq customers.⁵

² *In the Matter of the Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD ("06-1344"), Opinion and Order (August 22, 2008) at 56-57.

³ Embarq indicates that Doylestown's originating Carrier Common Line Charge ("CCL") is \$0.0150 per minute and Doylestown's terminating CCL is \$0.0428 per minute, while Embarq has no CCL (i.e., the effective rate is zero). Memorandum Contra and Request for Hearing of United Telephone Company of Ohio dba Embarq to Doylestown's Waiver Application (February 26, 2008) ("Embarq Memo Contra") at 2.

⁴ *Id.* at 4.

⁵ On March 5, 2008, AT&T Ohio, AT&T Long Distance, AT&T Communications of Ohio, Inc. and TCG Ohio (the "AT&T Entities") filed a motion to intervene. OCC expects that Doylestown would oppose that intervention as it has Embarq's (especially given the attenuated rationales expressed by the various AT&T entities).

OCC submits these initial comments in order to ensure that the residential consumer perspective is considered by the Commission.⁶

II. HISTORY OF THE PROCEEDINGS

Doylestown's Application relates the historical background leading to its application, including Doylestown's edge-out application and the terms under which it was approved, and the recent amendments to the Commission's carrier-to-carrier rules.⁷ This history need not be detailed here.

The Application also lays out Doylestown's investments in the edge-out territory, and the competitive service that is available to consumers in the Embarq Marshallville and Rittman exchanges.⁸ The application also discloses the sources of Doylestown's intrastate revenues, being derived 67% from intrastate access charges.⁹

III. EMBARQ'S INTEREST IN THE DOYLESTOWN APPLICATION

This is not the first time that Embarq has objected to a small local exchange carrier's ("SLEC's") edge-out activity. In 2005, Embarq objected to Ayersville Telephone Company's application to edge-out into Embarq's Defiance, Florida, Holgate

⁶ In its combined Memorandum Contra and Reply Memorandum to Embarq's filing, Doylestown stated (at 3) that it had no objection to Embarq filing comments on its application. Doylestown also noted Embarq's seeking the information that was redacted in the publicly-filed version of Doylestown's application, and had no objection to the filing by Embarq of additional comments based on that information. *Id.* OCC has also begun efforts to obtain that information from Doylestown.

⁷ Application at 1-2, 4-5.

⁸ *Id.* at 2-3.

⁹ *Id.* at 3. The specifics of revenues and expenses were filed under seal. *Id.* at 6-8. OCC is in the process of entering into a protective agreement with Doylestown for access to that information.

and Jewell exchanges, arguing that Ayersville's rates were anti-competitively low. The Commission rejected Embarq's position, and allowed the edge-out.¹⁰

It should be clear that Embarq's concern in this proceeding is **not** Doylestown's access charges for the edge-out territory in the Marshallville and Rittman exchanges. Embarq does not allege that it will be harmed by having to pay those access charges for calls originated by or terminated to the Doylestown customers in the two exchanges, and that therefore Doylestown's access charges should be reduced.¹¹

Instead, Embarq's argument is entirely about what it deems the "significant (and unfair) competitive advantage" resulting from the basic service rates that Doylestown charges to edge-out customers in the Embarq exchanges.¹² Embarq asserts that Doylestown is able to charge its basic service rates only because they are "subsidized by its improperly high access rates."¹³

In the AT&T Entities' motion to intervene, AT&T Ohio and AT&T Long Distance indicate an interest in this proceeding as interexchange carriers. The interexchange calls impacted here are limited to the intraLATA calls originating from or

¹⁰ *In the Matter of the Application of Ayersville Telephone Company for Authority to Expand Its Service Area Pursuant to Ohio Administrative Code Section 4901:106-08(D)*, Case No. 05-1443-TP-UNC, Finding and Order (May 10, 2006).

¹¹ According to the Commission's extended area service maps, calls from Doylestown to Marshallville and Rittman and vice versa are toll calls. This is, in part because the local access and transport area ("LATA") boundary runs between the exchanges; Doylestown is in the Akron/Canton LATA and Marshallville and Rittman are both in the Lima/Mansfield LATA.

¹² Embarq Memo Contra at 2.

¹³ *Id.* at 3.

terminating to the Doylestown "edge-out customers."¹⁴ That interest is minimal, given the scope of the AT&T long distance operations.

IV. INFORMATION ABOUT DOYLESTOWN'S AND EMBARQ'S RATES

Embarq is upset about competition for Embarq's customers from Doylestown's \$9.05 monthly R1 rate, which Embarq compares to its Rittman R1 rate of \$17.70 and Marshallville R1 rate of \$16.05.¹⁵ There are a number of problems with this simple comparison, however. Embarq's comparison does not include its \$5.80 federal subscriber line charge ("SLC") or Doylestown's \$6.50 SLC.

A. At first glance, Embarq's rates are even less competitive with Doylestown's than Embarq shows.

Unfortunately for Embarq, its comparison does not include all elements of its basic service rates. First, there is Embarq's \$4.10 per month Intrastate Access Fee, imposed on all of its residential customers.¹⁶

Further, given that Doylestown is "edging out" from its territory, it is "edging in" to Embarq's. That means that Doylestown is likely focusing on the Embarq customers who are closest to the Doylestown exchange (and furthest from the Embarq central offices and base rate area).¹⁷ Such customers will incur Embarq's zone charges. In both

¹⁴ Access charges for interLATA calls are set on the federal level.

¹⁵ Id. at 2. Embarq also includes a comparison between its and Doylestown's B1 business rates. As Doylestown points out in its combined Memorandum Contra and Reply Memorandum (at 4), Doylestown's edge-out service does not include any business customers. That also effectively disposes of AT&T Communications of Ohio's and TCG Ohio's interest in this proceeding as CLECs, because those entities do not market to residential customers.

¹⁶ Embarq PUCO No. 1, Section 4, Fourth Revised Sheet 5.

¹⁷ This also minimizes Doylestown's investment in facilities.

the Marshallville and Rittman exchanges, the zone furthest from the base rate area is Zone B, for which the surcharge is \$2.75 per month.¹⁸

Thus the more accurate comparison for residential service would be:

	Doylestown rate	Embarq Marshallville rate	Embarq Rittman rate
R1 rate	\$9.05	\$16.05	\$17.60
Zone charge	N/A	\$2.75	\$2.75
Intrastate access fee	N/A	\$4.10	\$4.10
Total intrastate rate	\$9.05	\$22.90	\$24.75
SLC	\$6.50	\$5.80	\$5.80
Total	\$15.50	\$28.70	\$30.25

Embarq's rate structure -- including rate bands and zone charges -- and the level of those rates were established in a rate case filed by its predecessor United Telephone Company of Ohio in 1982, more than twenty-five years ago.¹⁹ That rate structure was allowed to continue in the elective alternative regulation case of its immediate predecessor, Sprint.²⁰ Since that latter case -- brought in the name of competition -- Sprint has increased a number of its bundled and vertical service rates.²¹

The Intrastate Access Fee was adopted in 2001.²² But that fee was designed to replace a level of intrastate access revenues that is long outdated. At least Doylestown's

¹⁸ Embarq PUCO No. 6, Section C, Twenty-Fourth Revised Sheet 15.

¹⁹ *In the Matter of the Application of United Telephone Company of Ohio for Authority to Increase and Adjust its Rates and Charges and To Change Regulations and Practices Affecting the Same*, Case No. 81-627-TP-AIR, Opinion and Order (June 23, 1982).

²⁰ *In the Matter of the Application of United Telephone Company of Ohio d/b/a Sprint For Approval of an Elective Alternative Form of Regulation Pursuant to Chapter 4901:1-4, Ohio Admin. Code*, Case No. 02-2117-TP-ALT, Opinion and Order (October 3, 2002).

²¹ Embarq's tariff docket is Case No. 90-5041-TP-TRF. For rate increases under elective alt. reg., see e.g., Embarq's July 9, 2003, July 30, 2004, and October 12, 2004 filings.

²² *In the Matter of the Commission's Investigation into the Modification of Intrastate Access Charges*, Opinion and Order (July 19, 2001).

access revenues are based on current minutes of use; Doylestown asserts that those revenues are declining.²³

B. But bundled prices are also relevant.

The Ohio Supreme Court has just confirmed that the appropriate test for competition is the price of bundles of services, rather than the stand-alone basic service rate represented by the R1 rate.²⁴ Including such packages provides a more complete picture of the competitive situation.

For example, Doylestown charges \$6.00 per month for a custom calling features package that includes Call Waiting, Call Forwarding, Three-Way Calling and Speed Calling, with a package including only Call Waiting and Call Forwarding priced at \$3.50. Custom Local Area Signalling Services (“CLASS”) include Caller ID for \$5.00 a month; a second feature can be purchased for an additional \$2.00 a month and a third for \$1.50 more per month. Thus a customer could bundle Doylestown’s unlimited local calling with various features for a price of \$12.55 to \$17.55,

Embarq has a number of packages tariffed, but most appear to be grandfathered.²⁵ Of the “ungrandfathered” packages, one stands out: “Simple Solution,” which includes local exchange service, Caller ID with Name, and speed dialing, priced at \$23.99 per month.²⁶ Larger plans also require subscription to long distance plans and/or voicemail or similar unregulated services.

²³ Doylestown Petition at 3.

²⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm'n.*, Slip Opinion No. 2008-Ohio-860, ¶¶ 16-19; *Ohio Consumers' Counsel v. Pub. Util. Comm'n.*, Slip Opinion No. 2008-Ohio-861, ¶¶ 16-22.

²⁵ See, e.g., PUCO No. 5, Section 39, Fifth Revised Sheet 3 through First Revised Sheet 6.

²⁶ *Id.*, Third Revised Sheet 8.

This shows that, on the bundled front at least, Embarq's rates, while still higher, are more comparable to Doylestown's service. Embarq's simplistic comparison should not be the basis for a Commission decision.

C. And local calling area comparisons also play a role.

In evaluating competitiveness, it is also important to look at local calling areas, because they can influence the attractiveness of one company's service over another. The Rittman exchange has a flat-rate local calling area that includes Akron, Wadsworth, Sterling, Marshallville, Smithville and Wooster.²⁷ Marshallville's flat rate calling area includes only Rittman, Smithville, Orrville and Wooster.²⁸ By contrast, Doylestown's local calling area includes only Akron.²⁹

Embarq's Rittman and Marshallville customers who have local calling needs to the south and west will not likely find Doylestown's rates attractive. Embarq's Rittman customers will likely find Doylestown's more limited calling area unattractive. And only Embarq customers in the Marshallville exchange who are focused on Akron will be attracted by Doylestown's rates.

D. Embarq's solution should not be to seek increases for all of Doylestown's rates. Instead, Embarq should lower its own rates.

As discussed above, Embarq's proposed solution to the supposed unfair competition would be to require Doylestown customers to pay increased rates in the edge-out territory, and in fact, in the Doylestown ILEC territory as well. But Embarq has

²⁷ See <http://www.puc.state.oh.us/pucogis/easmaps/RTMN.pdf>.

²⁸ See <http://www.puc.state.oh.us/pucogis/easmaps/MRVL.pdf>. Marshallville does have optional local calling to Sterling, Apple Creek and Kidron. Id.

²⁹ See <http://www.puc.state.oh.us/pucogis/easmaps/DYTW.pdf>.

a solution available to it that would be better for customers of both companies: **Embarq should lower its rates in the Marshallville and Rittman exchanges.**³⁰

Under the Commission's rules, there is nothing to prevent Embarq from lowering rates in a specific exchange to meet competition. And it should be clear that Embarq has no need for rates as high as they are in Marshallville and Rittman: **In 2006, Embarq's return on equity was an astounding 41.55%!³¹** The five-year average was 32.97%, and the ten-year average was 29.38%. The "unfair competition" from Doylestown has clearly not harmed Embarq.³²

E. Denying the waiver will have a devastating impact on Doylestown and its edge-out customers.

As Doylestown explains in its application, given the configuration of its network³³ and its current billing system³⁴ in order to lower access charges only in the edge-out territory, Doylestown would have to adopt a billing solution the cost of which would be "grossly disproportionate" to the access revenues at issue here.³⁵ It would appear reasonable that, rather than make that incremental long-term investment, Doylestown might simply cease service in the edge-out territory and abandon the investment it has already made there.³⁶ That would leave the Embarq customers in the Embarq territory without any competitive options.

³⁰ In Case Nos. 03-2328-TP-ATA and 04-1198-TP-ATA, Embarq deaveraged its rates in the Lebanon, Lima, Mansfield and Warren exchanges in order to meet competition. In a February 1, 2005 filing in its tariff docket, Case No. 90-5041-TP-TRF, Embarq reduced its B1 rate in the Warren exchange.

³¹ Source: Embarq's 2006 Annual Report to the PUCO.

³² Or perhaps Embarq would argue that its returns would have been even higher absent the competition.

³³ Application at 2.

³⁴ Id. at 7.

³⁵ Id. at 8.

³⁶ See id. at 6-7.

Once again, Embarq's proposed "solution" to this problem would greatly overwhelm the problem itself: Embarq says that in order to avoid investing in the billing changes, Doylestown should lower its access charges throughout its territory.³⁷ But that has not been required by the Commission in its generic access charge proceeding³⁸; requiring this action as an alternative to the waiver would truly be a case of the tail wagging the dog.

V. THE COMMISSION NEED NOT HOLD A HEARING. OCC WILL PARTICIPATE IF A HEARING IS HELD.

As Doylestown explains in its combined Memorandum Contra and Reply Memorandum (at 5), a hearing is not necessary here: "This case involves a policy determination on whether the Commission should grant Doylestown a waiver of the access edgeout reduction requirement because it is inconsistent with Doylestown's edge-out authority and it is not economically feasible." If, however, the Commission decides to hold a hearing, then OCC would expect to participate in the hearing to protect the interests of Doylestown's residential customers (both edge-out and ILEC) and Embarq's residential customers as well.

VI. CONCLUSION

This proceeding can adversely affect the residential customers in Doylestown's incumbent service territory, and in its edge-out territory in the Marshallville and Rittman

³⁷ Embarq Memo at 4.

³⁸ *In the Matter of the Commission's Investigation into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI.

exchanges. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene, consider these comments on behalf of the residential customers who have an interest in the outcome of this case, and approve Doylestown's waiver request.

Respectfully submitted,

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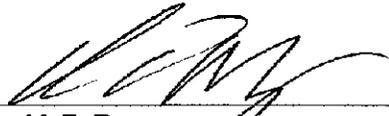


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Initial Comments on The Application and Response to Embarq's Memorandum Contra by the Office of the Ohio Consumers' Counsel was provided to the persons listed below by first class U.S. mail, postage prepaid, this 12th day of March, 2008.



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