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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Doylestown	)	
Telephone Company for a Waiver of Edge-Out	)	Case No. 08-0117-TP-WVR
Access Rate Reduction Requirements	)	

REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AND REQUEST FOR HEARING OF UNITED TELEPHONE COMPANY OF OHIO DBA EMBARQ

I. INTRODUCTION

United Telephone Company of Ohio d/b/a Embarq ("Embarq") has filed a motion to intervene and a request for hearings in this proceeding. In its motion, Embarq articulated the real and substantial interest that it has in this matter and demonstrated that those interests may be adversely affected. Embarq also demonstrated that no other party can adequately represent Embarq's interest. Embarq also showed that the factual claims of Doylestown Telephone Company ("Doylestown") should be tested in a hearing.

Doylestown has filed a memorandum contra to Embarq's motion to intervene and a reply to Embarq's memo contra and request for hearing ("Memo Contra"). The Memo Contra claims that Embarq is not entitled to intervene or to a hearing. Doylestown makes several arguments in opposing intervention and a hearing, but none of those arguments is persuasive.

II. ARGUMENT

A. *Embarq should be granted intervention.*

Doylestown first argues that intervention should be denied based on the authority

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of *Ohio Domestic Violence Network v. PUCO*, 70 Ohio St. 3d 311 (1994) ("ODVN").[1] But that case is clearly distinguishable from the instant one. In ODVN, the Commission had denied intervention to the OCC and to the ODVN in a tariff application by Ohio Bell seeking approval of new services. The Ohio Supreme Court upheld the Commission's denial of intervention finding that Ohio Rev. Code § 4903.221 contemplates intervention in quasi-judicial proceedings. And because the Commission did not exercise its discretion to hold a hearing on the application for new services, there was no right to intervene.[2] The Court noted that intervention in a tariff application would defeat the General Assembly's intent that new services be offered to the public without regulatory delay.[3] But that rationale simply does not apply here because Doylestown does not propose to offer a new service

ODVN is distinguishable for other reasons too. First, Embarq has requested that the Commission conduct an evidentiary hearing in this matter to determine if the waiver should be granted. If the Commission does so, this case will become a quasi-judicial proceeding, and the rationale of ODVN becomes inapplicable.

Furthermore, Embarq's motion to intervene is not based only upon Ohio Rev. Code § 4903.221. Embarq submits that intervention is appropriate also pursuant to Rule 4901-1-11(2) O.A.C.

Doylestown also argues that Embarq has an alternative avenue for relief available to it, filing a complaint pursuant to Ohio Rev. Code § 4905.26.[4] That claim is unavailing. It would serve no legitimate purpose to delay the resolution of the validity of

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[1] Doylestown Memo Contra at 2.
[2] 70 Ohio St. 3d at 315.
[3] Id.
[4] Doylestown Memo Contra at 2.

Doylestown's waiver application by granting the waiver, then requiring Embarq to file a complaint. The only result of that procedure would be delay. Furthermore, if the waiver were granted and Embarq filed a complaint, Doylestown would no doubt argue that the complaint was barred by the grant of the waiver. And Embarq's argument is not based on Ohio Rev. Code § 4905.26, but rather the requirements of the new Carrier-to-Carrier rules.

Doylestown also argues that Embarq's interest as a competitor does not constitute a real and substantial interest justifying intervention.[5] But the Commission has never held that a competitor is prohibited from intervening. And in P.U.C.O. Case No. 96-252-CT-ACE, the Commission granted intervention to MCI and AT&T in a case involving an application by GTE Card Services to provide toll services. AT&T and MCI were competitors of GTE Card Services.

Doylestown also argues against intervention based on the Commission's ruling regarding the Ayersville Telephone Company's edge-out case, PUCO Case No. 05-1443-TP-UNC ("Ayersville Case"). But that case is irrelevant because there were then no rules requiring Ayersville to cap its access charges.

B. *The Commission Should Grant A Hearing and Deny The Waiver Application.*

Doylestown attempts to support its waiver by noting that its entry into the Rittman exchange and the Marshallville exchange is pro-competitive.[6] But it is not competition that Embarq objects to. It is the unfair competition that Embarq faces because of Doylestown's inflated access charges. Presumably, it was the Commission's policy determination to further fair competition by requiring an edge-out ILEC to cap its access

[5] Doylestown Memo Contra at 3.
[6] Id at 4.

charges.

Doylestown also claims that it is not "operationally competitive with Embarq."[7] Regardless of what "operational" is intended to mean, the undeniable fact is that Doylestown does compete with Embarq for customers. When a customer in an Embarq exchange elects service from Doylestown, that is competition. To claim otherwise is nonsensical.

Doylestown also attempts to defend its inflated access rates by claiming that it "understood" when it began offering service that its access rates would only be changed as part of PUCO Case No. 00-127-TP-COI.[8] Embarq submits that it is immaterial what Doylestown "understood" when it edged-out. Doylestown cites no Commission authority to support its claim that the Commission would not and could not reform access charges in edge-out territories in some manner other than in Case No. 00-127-TP-COI. And Doylestown's argument is specifically belied by the Commission's statement in the Carrier-to-Carrier rulemaking that:

> This proceeding is the appropriate docket for the purpose of establishing switched access policy and rates for competitive entities.[9]

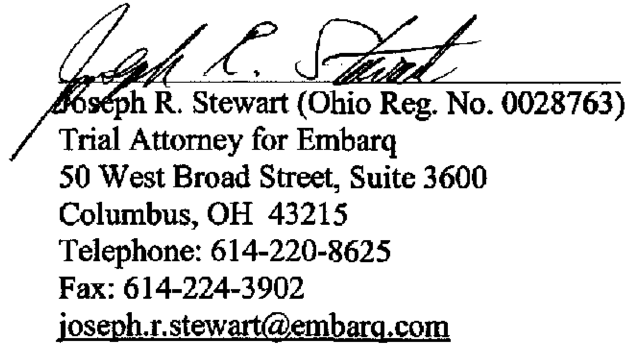
Even if it had been reasonable for Doylestown to assume that its intrastate access charges in its **incumbent** territory would not be reformed outside Case No. 00-127-TP-COI, that assumption was not reasonable with respect to access charges in competitive situations.

Finally, Doylestown opposes a hearing by claiming that there are no significant factual issues in this matter.[10] That is simply incorrect. Doylestown's entire waiver application is premised on various factual assertions, e.g., operational efficiency,

[7] Id.
[8] Id.
[9] PUCO Case No. 06-1344-TP-ORD, Opinion and Order at 57.
[10] Id at 5.

reduction of revenues, and the cost to make billing changes. Because the waiver request is almost entirely dependent upon factual premises, a hearing is appropriate.

Respectfully submitted,



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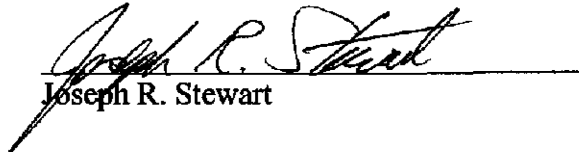
CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Reply Memorandum was e-mailed or served via first class mail, postage prepaid this 13th day of March 2008 to the persons listed below.



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