11

FILE

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. 08-117-TP-WVR

MOTION TO INTERVENE OF THE VERIZON COMPANIES

Pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code ("OAC"), Verizon North Inc., MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc. d/b/a Verizon Business Services, Teleconnect Long Distance Services & Systems Co. d/b/a Telecom USA, and TTI National, Inc. (collectively, the "Verizon Companies") hereby move to intervene in this proceeding.

As more fully discussed in the accompanying memorandum, the Verizon Companies have a real and substantial interest in this proceeding, and are so situated that the disposition of this case may, as a practical matter, impair or impede their ability to protect that interest. Further, the interest of the Verizon Companies is not represented by any existing party, and their participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceedings or unjustly prejudicing any existing party.

WHEREFORE, the Verizon Companies respectfully request that the Commission grant their motion to intervene.

Respectfully submitted,

BER

Barth E. Royer (Counsel of Record)

BELL &, ROYER CO., LPA
33 South Grant Avenue
Columbus, OH 43215-3900
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

A. Randall Vogelzang
General Counsel
Verizon Great Lakes Region
Verizon
HQE02J27
600 Hidden Ridge
Irving, TX 75038
(972) 718-2170 – Phone
(972) 718 0936 – Fax
randy.vogelzang@verizon.com – Email

Attorneys for the Verizon Companies

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. 08-117-TP-WVR

MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE OF THE VERIZON COMPANIES
AND
EMBARQ REQUEST FOR HEARING

With the adoption of Rule 4901:1-6-09, OAC, this Commission accorded small ILECs the option of providing edge-out service in the territory of another ILEC either as an out-of-territory ILEC or by creating a separate CLEC affiliate. *See In the Matter of the Review of Chapter 4901:1-6 Ohio Administrative Code*, Case No. 1345-TP-ORD (Opinion and Order dated June 6, 2007), at 48. However, in its August 22, 2007 opinion and order in its recently concluded carrier-to-carrier rulemaking proceeding, the Commission found that small ILECs electing to provide edge-out service as an ILEC should, like all facilities-based CLECs, be subject to the Rule 4901:1-7-14(D), OAC, requirement that their charges for intrastate switched access be capped at the access rates of the host ILEC, with any necessary reductions to be phased in over a three-year period. *See In the Matter of the Establishment of Carrier-to-Carrier Rules,* Case No. 06-1344-TP-ORD (Opinion and Order dated August 22, 2007), at 56-57. As the Commission stated:

> . . . small ILECs choosing to operate outside of their service territory as the ILEC should not be allowed to unduly benefit from higher access rates than those small ILECs choosing to operate out of their service area as separate CLEC affiliates, or other certified CLECs operating in this area, which are all subject to the switched access cap rule.

Id., at 57

In its application, Doylestown Telephone Company ("Doylestown") seeks a permanent waiver of the requirement that it reduce its charges for intrastate switched access in the Ritmann and Marshallville exchanges (where Doylestown provides edge-out service) to the access rates charged by United Telephone Company of Ohio d/b/a Embarq ("Embarq"), the host ILEC. If this application is granted, and Doylestown is excused from complying with the access rate cap applicable to all other CLECs, Doylestown will, to use the Commission's term, "unduly benefit" by securing a significant artificial competitive advantage, not only over Embarq, but over every CLEC that competes – or may wish to compete – for customers in these exchanges. Moreover, CLECs are not the only carriers that would be adversely affected if Doylestown's requested waiver is granted. IXCs operating in the Doylestown edge-out area are also entitled to reasonable access rates, as are ILECs that terminate toll calls to this area. Toll carriers contemplating entering this market based on the expectation that Doylestown would be subject to the access charge cap would have to assess the impact of higher than anticipated access charges on their plans.

Further, granting this application would be contrary to sound public policy. Although the Commission has previously cited universal service concerns as the basis for delaying the imposition of a requirement that small ILECs reduce their access charges, this rationale has no application here. Indeed, the Commission recognized this very point in the carrier-to-carrier rulemaking docket, noting that "while the current access rate in a small ILEC's incumbent territory was designed to serve a particular purpose, the same circumstances do not exist when a small ILEC operates out-of-territory." *Id.* In other words, the Commission correctly concluded that requiring other carriers to subsidize a small ILEC's competitive efforts when it ventures beyond its own service territory to attract local service customers would be inappropriate, unfair, and detrimental to the competitive environment. Thus, all carriers, be they CLECs, IXCs, or ILECs, would be prejudiced if Doylestown's waiver request is granted.

Section 4903.221, Revised Code, provides that any "person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." The movant Verizon Companies, whether CLECs, such as MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, IXCs, such as MCI Communications Services, Inc. d/b/a Verizon Business Service, or an ILEC that terminates toll calls to Doylestown, such as Verizon North Inc., clearly meet this standard for those reasons discussed above. Moreover, not only do the Verizon Companies satisfy this underlying statutory test, but they satisfy the criteria governing intervention set forth in the Commission's rules.

Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

> (A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:
>
> . . .
>
> (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As carriers subject to Doylestown's intrastate switched access charges, the Verizon Companies plainly have a real and substantial interest in a proceeding that will determine the access rates applicable to them and shape a market in which they compete. Further, at this juncture, none of the pending motions to intervene in this proceeding have been granted. Thus, by definition, no existing parties adequately represent the Verizon Companies' interests.

The specific considerations for intervention that the Commission must take into account in applying the Rule 4901-1-11(A)(2), OAC standard also fully support granting the Verizon Companies' motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

> In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:
>
> (1) The nature and extent of the prospective intervenor's interest.
>
> (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
>
> (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
>
> (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
>
> (5) The extent to which the person's interest is represented by existing parties.

First, as previously explained, the Verizon Companies' interest in the proposal contained in Doylestown's application is obviously direct and substantial. Second, the legal position taken by Verizon Companies in advocating that this application be denied – a position supported by both applicable law and announced Commission policy – goes to the very heart of the merits of the case. Third, in view of the fact that the proceeding has just commenced, granting the Verizon Companies' motion to intervene will not unduly delay or prolong the proceeding. Fourth, as the Commission well knows, many of the movant Verizon Companies have been frequent participants in cases involving the establishment of competitive telecommunication markets, both in Ohio and the numerous other states in which they do business. Thus, the Verizon Companies will bring substantial experience to bear on the issues raised. Finally, not only are there no existing parties that represent the Verizon Companies' interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings" [*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR

(Entry dated January 14, 1986), at 2] to apply the Rule 4901-1-11(B)(5) standard in a manner that would favor certain carriers over others based on the order in which their motions to intervene were filed. Thus, granting the Verizon Companies intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

In its March 13, 2008 filing in this docket, Embarq, whose motion to intervene is currently pending, requested that the Commission hold a hearing on Doylestown's application. The Verizon Companies support Embarq's request for all the reasons stated therein, and would offer the following additional observations.

In its October 17, 2007 entry on rehearing in the carrier-to-carrier rulemaking proceeding, the Commission squarely rejected the argument advanced by certain small ILECs that access charge caps should not be applicable to edge-out carriers. *In the Matter of the Establishment of Carrier-to-Carrier Rules,* Case No. 06-1344-TP-ORD (Entry on Rehearing dated October 17, 2007), at 15. However, in denying rehearing on this ground, the Commission did note that small ILECs could seek relief from this requirement, but, that such waiver requests would be granted only "upon a detailed demonstration that it is economically and or technically infeasible to comply with this rule; and by further demonstrating how this rule is inconsistent with its current 'edge-out' authority." *Id,* at 18-19. On its face, the Doylestown application does not satisfy this standard.

The rationale Doylestown provides as a basis for its waiver request – that it relied on the continued existence of above-cost access charges in formulating its edge-out plan – cannot be the showing the Commission had in mind in establishing the above test. Not only is this an argument that could be made in the wake of any regulatory change, but it is particularly unavailing in this context. If Doylestown were so imprudent as to base its business plan on the assumption that its access charges would never be reduced in the face of the Commission's oft-stated intention to rationalize access charges, it has only itself to blame. Surely, Doylestown cannot seriously maintain that it truly believed that the Commission would force carriers that purchase access from it in the edge-out area to subsidize its competitive efforts, or that the Commission would countenance the discrimination that would result if all carriers competing for customers in the edge-out area, except Doylestown, were subject to the cap. If the Commission sets a precedent by granting a waiver to Doylestown based on its argument that it reasonably relied on the continuation of the revenue stream generated by its existing high access rates in formulating its edge-out plan, the Commission can expect every small ILEC operating in an edge-out area to seek similar relief, which, if granted, would render the rule applying access caps to edge-out small ILECs meaningless.

This Commission has, on numerous occasions, articulated the economic and consumer benefits associated with a rational access charge regime. During the 1980's and 1990's – well before Doylestown began constructing facilities to provide edge-out service – the Commission, consistent with its stated policy, ordered ILECs to reduce their interstate access rates.[1] The Commission continued to effectuate that policy in 2001, when it applied the CALLS rates to AT&T Ohio, Cincinnati Bell, Embarq, and Verizon, concluding that the resulting access charge reductions "will benefit consumers, are pro-competitive, and will promote economic efficiency." *Access Charge Order* at 14. Moreover, the Commission recently touted its access reform efforts

[1] *See, e.g., In the Matter of the Commission's Investigation of Intrastate Access Charges*, Opinion and Order, Case No. 83-464-TP-COI (dated Mar. 12, 1987) ("1987 Access Charge Order"), 36 (requiring all ILECs to cap intrastate rates at interstate levels); *In the Matter of the Complaint of AT&T Communications of Ohio, Inc., Complainant, v. Ameritech Ohio, Respondent*, Opinion and Order, Case No. 96-336-TP-CSS, 1997 Ohio PUC LEXIS 712 (dated Sept. 18, 1997) at *47-50 (requiring Ameritech to reduce its intrastate switched access rates by mirroring its interstate rates).

to the FCC, stating that it "has a long established policy of mirroring interstate access rates" and stating that it needs no federal inducement to pursue access reform because it has already concluded that "reductions in intrastate access rates serve the public good." *See* Comments of the Public Utilities Commission of Ohio, *Developing a Unified Intercarrier Compensation Regime*, CC Docket NO. 01-92 (filed October 25, 2006), at 27, 42-43. Indeed, the adoption of the access charge cap requirement is but the latest step taken by the Commission to implement its stated preference for rational intrastate switched access rates. *See In the Matter of the Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD (Opinion and Order dated August 22, 2007), at 55-57. Thus, the relief requested by Doylestown would undermine the Commission's ongoing access reform efforts. Not only is the request inconsistent with established Commission policy, but it flies in the face of that policy by expanding the divide between CLECs and small ILECs competing for the same customers. The Commission should be closing this gap, not widening it.

The foregoing arguments, as well as those raised by Embarq and the AT&T Entities[2] in their filings in this docket, are more than sufficient to suggest that the Doylestown proposal "may be unjust or unreasonable" – the standard which would trigger a hearing if this application were before the Commission as an ATA under Section 4909.18, Revised Code. However, even if the Commission deigns not to apply this standard in this context of an application for a waiver brought under the carrier-to-carrier rules, the Commission must, nonetheless, set this matter for hearing to determine if the specific waiver standard enunciated in its October 17, 2007 entry on rehearing in the carrier-to-carrier rulemaking has been met. That standard – "a detailed demonstration that it is economically and or technically infeasible to comply with this rule; and

[2] The AT&T Entities also have a pending motion to intervene.

by further demonstrating how this rule is inconsistent with its current 'edge-out authority" – has not yet been satisfied. To date, Doylestown has demonstrated nothing. It has merely made a number of untested factual allegations. The Commission cannot determine whether Doylestown has met the burden contemplated by its waiver standard until those allegations are scrutinized in an evidentiary hearing in which parties whose interests are adversely affected by Doylestown's application are permitted to participate. To decide this matter in a vacuum would violate fundamental principles of fairness.

WHEREFORE, the Verizon Companies respectfully request that their motion to intervene be granted and that the Commission set this matter for hearing and establish a procedural schedule.

Respectfully submitted,

Barth E. Royer (Counsel of Record)
BELL &, ROYER CO., LPA
33 South Grant Avenue
Columbus, OH 43215-3900
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Randall Vogelzang
General Counsel
Verizon Great Lakes Region
Verizon
HQE02J27
600 Hidden Ridge
Irving, TX 75038
(972) 718-2170 – Phone
(972) 718 0936 – Fax
randy.vogelzang@verizon.com – Email

Attorneys for the Verizon Companies

CERTIFICATE OF SERVICE

I hereby certify that that a copy of the foregoing has been served upon the parties listed below by first-class U.S. mail, postage prepaid, this 26th day of March 2008.

Barth E. Royer

William A. Adams
BAILEY CAVALIERI LLC
10 West Broad Street
Columbus, OH 43215-3422

Joseph Stewart
Embarq
Law/External Affairs
50 West Broad St., Suite 3600
Columbus OH 43215-5918

Jon Kelly
AT&T Ohio
150 East Gay St., Room 4-C
Columbus OH 43215

David Bergmann
Office of Ohio Consumers' Counsel
10 West Broad St., Suite 1800
Columbus OH 43215-3485