

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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2008 APR -7 PM 5: 26

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

**PUCO**

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**REPLY TO  
DOYLESTOWN MEMORANDUM CONTRA  
MOTION TO INTERVENE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers, has moved the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in this case. Applicant Doylestown Telephone Company ("Doylestown"), although agreeing with OCC's comments filed in conjunction with the motion to intervene, has opposed OCC's intervention. Doylestown's reasons for denying OCC's intervention lack any basis. OCC's motion to intervene should be granted.<sup>1</sup>

On February 8, 2008, Doylestown filed with the PUCO an application seeking a waiver of the requirement contained in Ohio Adm. Code 4901:1-7-14(D) that Doylestown reduce its intrastate access charges to the level of the charges imposed by United Telephone Company of Ohio d/b/a Embarq ("Embarq") in Embarq's 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

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<sup>1</sup> This reply memorandum is filed pursuant to Ohio Adm. Code 4901-1-12(B).

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Embarq ILEC exchanges -- in 2001.<sup>2</sup> Pursuant to the Commission's order in the case adopting the rule, Doylestown would be required to reduce its access rates to the level of Embarq's (in the Embarq exchanges) over a period of three years beginning in August 2008.<sup>3</sup>

On February 26, 2008, Embarq filed a "Memorandum Contra and Request for Hearing" on Doylestown's application.<sup>4</sup> The bottom line proposal from Embarq was that Doylestown should increase "its local rates in both the edge-out exchanges and in its incumbent territory."<sup>5</sup> On March 5, 2008, the AT&T Entities filed a motion to intervene. Doylestown has opposed both of those motions.<sup>6</sup> On March 26, 2008, the Verizon Companies filed a Motion to Intervene and support for Embarq's request for a hearing. Doylestown has not yet responded to the Verizon pleading.

On March 13, OCC, the state agency that represents residential utility consumers, 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 residential customers. OCC's Motion to Intervene showed that the requirements of R.C. 4903.221 were met. R.C. 4903.221 provides, in part, that any

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<sup>2</sup> *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).

<sup>3</sup> *In the Matter of the Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD, Opinion and Order (August 22, 2008) at 56-57.

<sup>4</sup> 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 waiver, and that granting the waiver would be inconsistent with the Commission's access charge policy. Embarq Memorandum Contra at 2-6.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> See Doylestown Memorandum Contra Embarq (March 6, 2006) and Contra AT&T (March 11, 2008). Those entities both filed reply memoranda on March 13, 2008.

person “who may be adversely affected” by a PUCO proceeding is entitled to intervene in that proceeding. Because Embarq is alleging that Doylestown’s rates are anti-competitive and should be increased, the interests of residential telephone customers may be “adversely affected” by this case. Further, consumer interests are not represented by any of the other parties participating in this proceeding. Thus, OCC satisfies this element of the intervention standard in R.C. 4903.221. OCC also showed in detail how the criteria in R.C. 4903.221(B) were met.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where Doylestown’s basic service rates are in question. In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Doylestown’s memorandum contra OCC’s intervention states,

For many years, the Ohio Supreme Court has held that the intervention statute clearly contemplates intervention in quasi-judicial proceedings, characterized by notice, hearing, and the making of an evidentiary record. ... Because this is not a quasi-judicial proceeding, intervention is not appropriate.<sup>7</sup>

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<sup>7</sup> Doylestown Memorandum Contra at 1, citing *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 70 Ohio St.3d 311, 315-316 (1994).

Doylestown dismisses the recent case of *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853 ("*OCC 2006*"), ¶18-20, which, as Doylestown acknowledges, held that "intervention ought to be liberally allowed."<sup>8</sup>

In that case, the Court noted that

The Consumers' Counsel's interests were not represented by any other party to the proceedings, and there is no suggestion in the record that intervention would have unduly delayed the proceedings or caused prejudice to any party. In addition, the memoranda filed by the Consumers' Counsel in support of her motions to intervene in the two cases presented the view that the accounting changes sought by the two electric companies would adversely affect the companies' residential customers....<sup>9</sup>

The same situation applies here. The Court did not rely on whether the proceeding was quasi-judicial proceedings, characterized by notice, hearing, and the making of an evidentiary record, in finding that the Commission had abused its discretion in denying OCC's intervention.

In *OCC 2006*, the Court distinguished the *Ohio Domestic Violence Network* case cited by Doylestown. In that case, the Court had focused on whether a hearing was to be held, whether intervention would result in delay, and on whether the potential intervenor had an alternative avenue for recourse.<sup>10</sup> But the *OCC 2006* Court reiterated, nonetheless, that

[e]ven if no hearing was scheduled or contemplated when the Consumers' Counsel sought to intervene, her motions and accompanying memoranda properly addressed the relevant criteria of R.C. 4903.221. In our view, whether or not a hearing is held, intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO. The Consumers' Counsel

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<sup>8</sup> Id. at 1, n.1.

<sup>9</sup> 2006-Ohio-5853, ¶ 18.

<sup>10</sup> Id., ¶ 19.

explained her interest in the cases in her motions to intervene and also explained that her views would not be adequately represented by the existing parties. In the absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should have been granted.<sup>11</sup>

OCC's motion to intervene clearly met the Supreme Court's test for intervention "liberally allowed." There is no evidence in the record calling OCC's assertions of interest into doubt, and no suggestion that OCC's intervention would "unduly prolong or delay the proceedings." Indeed, Doylestown makes no assertion regarding delay in its Memorandum Contra.<sup>12</sup>

Doylestown simply asserts that "OCC does not have a real and substantial interest in this case...."<sup>13</sup> Doylestown's argument consists, however, of a recitation of how Embarq's and AT&T's interests are insufficient,<sup>14</sup> accompanied by the acknowledgement that "OCC's interest in this case is more substantial than competitors like Embarq or the AT&T Entities"<sup>15</sup> followed by the assertion that this "still is insufficient to warrant intervention in this case."<sup>16</sup> The lack of substance in Doylestown's argument cannot be given credence, and should be ignored.

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<sup>11</sup> Id., ¶ 20.

<sup>12</sup> Doylestown does assert -- in a footnote -- that "OCC has alternative avenues to protect residential customers' interests, such as a complaint case under Ohio Rev. Code § 4905.26." Doylestown Memorandum Contra at 1, n. 1. Under Doylestown's position, however, OCC would have to file, for example, a complaint against the denial of the waiver for access charges paid by interexchange carriers sought by Doylestown, or a complaint against the lack of competition in the Embarq exchanges, if Doylestown pulls out because the waiver is denied. Neither scenario seems reasonable.

<sup>13</sup> Doylestown Memorandum Contra at 1. Clearly, these assertions do not rise to the level of evidence referred to by the *OCC 2006* Court, at ¶ 20.

<sup>14</sup> Doylestown Memorandum Contra at 2.

<sup>15</sup> Id.

<sup>16</sup> Id.

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio's residential consumers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Reply Memorandum by the Office of the Ohio Consumers' Counsel was provided to the persons listed below by first class U.S. mail, postage prepaid, this 7<sup>th</sup> day of April 2008.



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