

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of United     )  
Telephone Company of Ohio d/b/a Embarq     )  
for Approval of an Alternative Form of     )  
Regulation of Basic Local Exchange     ) Case No. 09-151-TP-BLS  
Service and Other Tier 1 Services Pursuant     )  
to Chapter 4901:1-4, Ohio Administrative     )  
Code.     )

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**MOTION  
TO EXTEND THE DEADLINE FOR SERVING DISCOVERY REQUESTS  
AND  
REQUEST FOR EXPEDITED RULING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in this proceeding on behalf of residential utility customers,<sup>1</sup> moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to extend the deadline for serving discovery requests in this proceeding.<sup>2</sup> There is good cause to extend the timeframe for serving discovery requests. Extending the deadline would be consistent with the ten-day timeframe for discovery responses in Ohio Adm. Code 4901:1-4-09(I) ("Rule 9(I)") and with discovery deadlines in previous basic local exchange service ("basic service") alternative regulation ("alt. reg.") proceedings. In addition, OCC has not yet obtained those portions of the application that United Telephone Company of Ohio d/b/a Embarq ("Embarq" or "Company") asserts to be confidential.

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<sup>1</sup> OCC's intervention was granted in an Entry issued on March 9, 2009, at 2.

<sup>2</sup> This motion is filed pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-17(G).

OCC requests an expedited ruling on this motion, pursuant to Ohio Adm. Code 4901-1-12(C). OCC cannot certify that no party objects to the issuance of an expedited ruling.

There is good cause for the granting OCC's motion, as explained in the following memorandum.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record  
David C. Bergmann  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Phone: 614-466-8574

[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)

[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

In this proceeding, the Commission is considering Embarq's Application for authority to raise the basic service rates paid by customers in the Bellefontaine, Eaton, Greenville, Mount Gilead, North Benton, Sunbury, West Manchester and Wauseon exchanges.<sup>3</sup> If the Application is approved, Embarq's residential customers in the nine exchanges may be subjected to increases of \$1.25 per month on an annual basis for basic service and \$0.50 per month on an annual basis for basic Caller ID service, without additional Commission review. The Application provides information purporting to support Embarq's claims that each exchange meets the test in Ohio Adm. Code 4901:1-4-10(A)(4) for approval of basic service alt. reg., including information that Embarq asserts to be confidential. The Commission granted Embarq's motion for protection regarding the information.<sup>4</sup>

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<sup>3</sup> See Application (March 3, 2009).

<sup>4</sup> Entry at 1.

In the Entry, the Commission set a deadline of March 27, 2009 for serving discovery requests,<sup>5</sup> which does not afford OCC ample rights of discovery as required by R.C. 4903.082 and as contemplated by the Commission's basic service alt. reg. rules. Although Rule 9(I) requires that discovery responses be served within ten days after the discovery request, the discovery deadline established in this proceeding – 21 days before the April 17, 2009 deadline for filing an opposition to the Application<sup>6</sup> – gives OCC a mere 24 days to conduct discovery. As discussed herein, the deadline provided in the Entry is inconsistent with Rule 9(I) and Commission precedent in basic service alt. reg. proceedings. The discovery period is insufficient for OCC to conduct proper discovery on Embarq's 266-page application.

In order for there to be adequate discovery, the Commission should grant OCC a modest extension of the deadline for serving discovery responses. To be consistent with the discovery response time in Rule 9(I) and the procedural schedules of previous basic service alt. reg. proceedings, OCC should be allowed to serve discovery up to eleven days before the April 17 deadline for filing an opposition. Thus, OCC moves the Commission to extend the deadline for serving discovery in this proceeding by ten days, to April 6, 2009. Given the truncated nature of basic service alt. reg. proceedings, OCC also asks for an expedited ruling on this Motion.

## **II. STANDARD OF REVIEW**

Ohio Adm. Code 4901:1-17(G) states that the Commission "may shorten or enlarge the time periods for discovery, upon [its] own motion or upon motion of any

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<sup>5</sup> Id. at 2.

<sup>6</sup> See id.

party for good cause shown.” As discussed below, there is good cause for granting the extension of the deadline to serve discovery requests that OCC seeks.

### III. ARGUMENT

**A. In Order to Provide OCC Ample Discovery Rights as Required by Law, OCC Should Be Allowed to Serve Discovery Requests Up to Eleven Days Before the Deadline for Filing an Opposition to a Basic Service Alternative Regulation Application.**

The 45-day timeframe for objections established in the Commission’s basic service alt. reg. rules recognizes that, among other things, parties need to have adequate time to obtain and analyze data regarding the exchanges listed in a basic service alt. reg. application.<sup>7</sup> In adopting Rule 9(I), the Commission recognized that parties in basic service alt. reg. proceedings must be able “to timely review data prior to the filing of pleadings.”<sup>8</sup> The deadline for serving discovery requests established in the Entry, however, is inadequate to allow OCC to obtain, review and analyze information regarding the support for the Application in this proceeding.

The March 27 deadline to serve discovery requests in this proceeding provides OCC only 24 days to obtain all the data – including allegedly confidential information – in the 266-page Application, review the data, prepare discovery requests, receive responses, review the responses and prepare any necessary follow-up requests. This 24-day timeframe is insufficient to provide OCC with ample discovery rights as required by R.C. 4903.082 and as contemplated by Rule 9(I).

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<sup>7</sup> *In the Matter of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*, Case No. 05-1305-TP-ORD, Opinion and Order (March 7, 2006) at 14 (agreeing with the Consumer Groups on the need to provide adequate time for parties to file objections to an application).

<sup>8</sup> Case No. 05-1305-TP-ORD, Entry on Rehearing (May 3, 2006) at 3.

The inadequacy of the timeframe established in the Entry is compounded by the fact that OCC has not yet been able to finalize a protective agreement with Embarq. Thus, OCC has not yet received the allegedly confidential information that was filed with the Application, even though the Application was filed 17 days ago. Although OCC is hopeful that an agreement can be reached soon,<sup>9</sup> the deadline set forth in the Entry is now just seven days away. It is not likely that OCC will be able to review the allegedly confidential information (once it is received) and prepare meaningful discovery requests within the next seven days. The deadline would also preclude OCC from conducting follow-up discovery on the allegedly confidential information, if necessary.

The timeframe for discovery requests established in the Entry is also inconsistent with the discovery timeframes in previous basic service alt. reg. cases. In most of the cases, discovery was allowed until eleven days before the deadline for filing objections.<sup>10</sup> In some other cases, there was no specific discovery deadline. But in three cases

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<sup>9</sup> If not, OCC may seek an additional extension of the deadline for discovery requests and/or the deadline for filing an objection.

<sup>10</sup> See *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 08-1281-TP-BLS, Entry (January 6, 2008) at 2; *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 08-912-TP-BLS, Entry (August 12, 2008) at 2; *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 08-107-TP-BLS, Entry (February 27, 2008) at 2; *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 07-1312-TP-BLS, Entry (January 17, 2008) at 2-3; *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 06-1013, Entry (September 22, 2006) at 2; *In the Matter of the Application of Cincinnati Bell Telephone Company LLC for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 06-1002-TP-BLS, Entry (September 29, 2006) at 2 (the discovery deadline was after OCC filed its objections).

discovery was ordered to proceed according to Rule 9(I),<sup>11</sup> which only mentions the ten-day time for discovery responses. Thus, by implication, the effective discovery deadline in those cases was eleven days before the deadline for filing objections. The issue of a discovery deadline was not addressed in two other cases.<sup>12</sup>

In addition, Embarq would not be harmed by granting OCC's Motion. The additional time for submitting discovery requests would not alter any dates for filing pleadings or the automatic approval timeframe in this proceeding.

The discovery period set forth in the Entry does not provide OCC ample discovery rights as required by statute and by PUCO rule. OCC has presented good cause for an extension of the deadline for discovery requests. The Commission should grant OCC's Motion and extend the deadline to submit discovery requests in this proceeding to April 6, 2009.

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<sup>11</sup> *In the Matter of the Application of Verizon North, Inc. for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 08-989-TP-BLS, Entry (October 10, 2008) at 2; *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 08-594-TP-BLS, Entry (July 16, 2008) at 2; *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 07-259, Entry (April 11, 2007) at 2.

<sup>12</sup> *In the Matter of the Application of United Telephone Company of Ohio d/b/a Embarq for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 08-1041-TP-BLS; *In the Matter of the Application of United Telephone Company of Ohio d/b/a Embarq for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 07-760-TP-BLS. Although in one additional proceeding (09-74-TP-BLS) OCC did not object to a discovery deadline similar to the one in this proceeding, that nonobjection was unintended on OCC's part and should not be construed as OCC's acquiescence to such a short discovery period in the proceeding here or any future proceedings.

**B. The Need for an Expedited Ruling**

Given that the deadline for discovery established in the Entry is rapidly approaching, it is clear that an expedited ruling on this Motion is necessary. OCC cannot certify that no party objects to an expedited ruling on this Motion.

**IV. CONCLUSION**

OCC's motion for extending the deadline for discovery requests should be granted for the good cause shown, pursuant to Ohio Adm. Code 4901-1-17(G). Extending the deadline for OCC to submit discovery requests, to April 6, 2009, would be consistent with R.C. 4903.082, Rule 9(I) and Commission precedent. Embarq would not be harmed by granting OCC's Motion, or by issuing an expedited ruling on the Motion.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Terry L. Etter  
\_\_\_\_\_  
Terry L. Etter, Counsel of Record  
David C. Bergmann  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Phone: 614-466-8574  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)  
[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)



## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was served by first class United States Mail, postage prepaid, and electronic mail to the persons listed below, on this 20<sup>th</sup> day of March 2009.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

## **SERVICE LIST**

### **DUANE W. LUCKEY**

Assistant Attorney General  
Chief, Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793  
[duane.luckey@puc.state.oh.us](mailto:duane.luckey@puc.state.oh.us)

### **JOSEPH R. STEWART**

Embarq  
50 West Broad Street, Suite 3600  
Columbus, Ohio 43215  
[joseph.r.stewart@embarq.com](mailto:joseph.r.stewart@embarq.com)

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Summary: Motion Motion to Extend the Deadline for Serving Discovery Requests and Request for Expedited Ruling by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel