

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) Section 4927.03(A)(1), Revised Code, authorizes alternative regulation of basic local exchange service (BLES) offered by incumbent local exchange companies (ILECs) in those telephone exchanges where the Commission determines that alternative regulation is in the public interest. To qualify for alternative regulation, an ILEC must be subject to competition or customers must have reasonably available alternatives. In addition, the Commission must establish that there are no barriers to market entry. The Commission is authorized by Section 4927.03(D), Revised Code, to adopt rules to carry out the statutory intent.

On March 7, 2006, the Commission, pursuant to Case No. 05-1305-TP-ORD (05-1305), *In the Matter of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*, established rules for the alternative regulation of BLES. These rules were subjected to the legislative rule review process and became effective on August 7, 2006. Consistent with these rules, ILECs with an approved elective alternative regulation plan can apply for pricing flexibility of BLES and other Tier 1 services. Applications for alternative regulation of BLES and basic Caller ID will be approved provided the applicant satisfies one of the competitive market tests identified in Rule 4901-1-4-10, Ohio Administrative Code (O.A.C.), in a given exchange. Pursuant to Rule 4901:1-4-09(G), O.A.C., an ILEC's application for BLES alternative regulation will become effective on the one hundred and twenty-first day after the

filing of the application unless the application is suspended by the Commission.

- (2) On March 3, 2009, United Telephone Company of Ohio dba Embarq (Embarq) filed a BLES application pursuant to Section 4927.03, Revised Code, and Rule 4901:1-4-09, O.A.C. Pursuant to its application, Embarq seeks approval of an alternative form of regulation of BLES and other Tier 1 services pursuant to Rule 4901:1-4-10(C)(4), O.A.C., in the following exchanges: Bellefontaine, Eaton, Greenville, Mount Gilead, North Benton, Sunbury, West Manchester, Wauseon, and Hebron. Also on March 3, 2009, Embarq filed a motion for a protective order.
- (3) By attorney examiner's entry issued March 9, 2009, the Office of the Ohio Consumers' Counsel's (OCC) March 4, 2009, motion to intervene and Embarq's motion for protective treatment were granted.
- (4) No objections were filed concerning Embarq's application.
- (5) Rule 4901:1-4-10(C)(4), O.A.C., provides that an applicant seeking BLES authority must demonstrate that in each requested telephone exchange area at least 15 percent of total residential access lines have been lost since 2002, as reflected in the applicant's annual report filed with the Commission in 2003, reflecting data for 2002. In addition, each applicant seeking BLES authority must indicate the presence of at least five unaffiliated facilities-based alternative providers serving the residential market.

Embarq's application offers the following access line losses as evidence that the company has met the first prong of Rule 4901:1-4-10(C)(4), O.A.C.: Bellefontaine 27.68 percent, Eaton 50.66 percent, Greenville 47.67 percent, Mount Gilead 36.78 percent, North Benton 40.33 percent, Sunbury 34.95 percent, West Manchester 36.95 percent, Wauseon 28.85 percent, and Hebron 53.58 percent. The Commission determines that Embarq has substantiated its residential access line losses in these four exchanges as delineated in Attachment A.

Regarding the second prong of Rule 4901:1-4-10(C)(4), O.A.C., Embarq indicates the following as unaffiliated facilities-based alternative providers serving the residential market in the involved exchanges: Bellefontaine five providers, Eaton five

providers, Greenville six providers, Mount Gilead five providers, North Benton five providers, Sunbury five providers, West Manchester five providers, Wauseon five providers, and Hebron six providers. The Commission determines that Embarq has substantiated its list of unaffiliated facilities-based alternative providers serving the residential market in these nine exchanges as delineated in Attachment A.

- (6) Upon a thorough review of the record in this proceeding, the Commission determines that, pursuant to Section 4927.03(A), Revised Code, Embarq has met its burden of proof for the nine exchanges identified in Attachment A of this finding and order. Specifically, Embarq has demonstrated that the granting of the company's application for BLES and other Tier 1 service flexibility in the designated exchanges in Attachment A is in the public interest, that Embarq BLES is subject to competition or that the company's customers have reasonably available alternatives, and that there are no barriers to entry with respect to BLES in those exchanges. Moreover, the Commission determines that Embarq's application is complete and meets the filing requirements of Rule 4901:1-4-09, O.A.C. As a final matter, the Commission finds that Embarq's proposed tariff modifications necessary to implement the pricing flexibility set forth in Rule 4901:1-4-09(A), O.A.C., are just and reasonable as to the nine exchanges approved pursuant to this finding and order.

It is, therefore,

ORDERED, That Embarq's application for alternative regulation of BLES and other Tier 1 services is granted as discussed above. It is, further,

ORDERED, That, for the exchanges identified in Attachment A of this finding and order, Embarq is granted Tier 2 pricing flexibility for all Tier 1 noncore services and BLES and basic Caller ID will be subject to the pricing flexibility provided pursuant to Rule 4901:1-4-11, O.A.C. It is, further,

ORDERED, That, consistent with Rule 4901:1-4-11, O.A.C., Embarq shall provide customer notice to affected customers a minimum of 30 days prior to any increase in rates. It is, further,

ORDERED, That the proposed tariff revisions are approved as discussed above. Embarq is authorized to file complete copies of tariffs in final form consistent with this

finding and order. Embarq shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR), and one copy in this case docket. It is, further,

ORDERED, That, except as specifically provided for in this finding and order, nothing shall be binding upon the Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this finding and order be served upon all parties and interested persons of record.

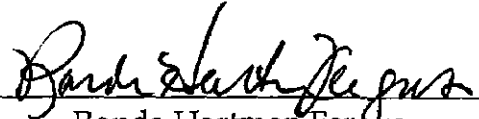
## THE PUBLIC UTILITIES COMMISSION OF OHIO



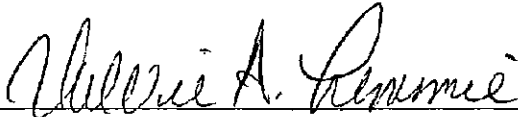
Alan R. Schriber, Chairman



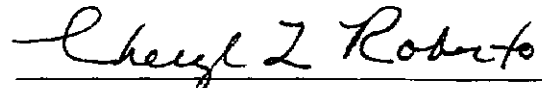
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JML:ct

Entered in the Journal

JUN 03 2009

Renee J. Jenkins  
Secretary

**United Telephone Company of Ohio dba Embarq****Case No. 09-151-TP-BLS****Test 4 Results**

<u>Exchange Name</u>	<u>Test Used</u>	<u>% Access Lines Lost</u>	<u># of Unafilt. F.B. Alt. Providers</u>	<u>Names of Unaffiliated F.B. alt. providers</u>	<u>Test #4 Result</u>
1 Bellefontaine	4	27.68%	5	Level 3/Packet 8 Sprint Comm./TW Cable Verizon Wireless AT&T Wireless Sprint/Nextel	Approved
2 Eaton	4	50.66%	5	Level 3/Packet 8 Sprint Comm./TW Cable Verizon Wireless AT&T Wireless Sprint/Nextel	Approved
3 Greenville	4	47.67%	6	Level 3/Packet 8 Sprint Comm./TW Cable Verizon Wireless AT&T Wireless Sprint/Nextel T-Mobile	Approved
4 Hebron	4	53.58%	6	Level 3/Packet 8 Sprint Comm./TW Cable Verizon Wireless AT&T Wireless Sprint/Nextel T-Mobile	Approved
5 Mt. Gilead	4	36.78%	5	Level 3/Packet 8 Sprint Comm./TW Cable Verizon Wireless AT&T Wireless Sprint/Nextel	Approved
6 North Benton	4	40.33%	5	Armstrong Telecom. Sprint Comm./TW Cable Verizon Wireless AT&T Wireless Sprint/Nextel	Approved

7	Sunbury	4	34.95%	5	Level 3/Packet 8 Insight Phones Sprint Comm./TW Cable Verizon Wireless AT&T Wireless	Approved
8	Wauseon	4	28.85%	5	Level 3/Packet 8 Sprint Comm./TW Cable Verizon Wireless AT&T Wireless Sprint/Nextel	Approved
9	West Manchester	4	36.95%	5	Level 3/packet 8 Sprint Comm./TW Cable Verizon Wireless AT&T Wireless Sprint/Nextel	Approved