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

FINDING AND ORDER

The Commission finds:

(1) Pursuant to its Finding and Order dated April 25, 2001, in Case No. 01-568-TP-UNC (hereinafter 01-568), *In the Matter of the Application of Doylestown Telephone Company for Authority to Expand its Service Area and for a Waiver of the Commission's Rules Regarding Local Competition in Ohio*, the Commission granted an application filed by Doylestown Telephone Company (Doylestown or company) to expand ("edge-out") into the adjacent Rittman and Marshallville exchanges of United Telephone Company dba Embarq (Embarq) based on the following representations made in the company's application:

(a) The services, rates, terms, and conditions for the expanded service area will not be materially different than those of the Doylestown Exchange.

(b) The local calling area for the new service area will be the same as that of the Doylestown Exchange.

(2) On August 22, 2007, in Case No. 06-1344-TP-ORD (hereinafter 06-1344), *In the Matter of the Establishment of Carrier-to-Carrier Rules*, the Commission issued its Opinion and Order requiring small ILECs granted edge-out authority to reduce their intrastate access charges in edge-out service areas from the existing rates to the rates of the ILEC in whose territories the edge-out company is operating. The requisite access rate reduction is to occur over a three-year period beginning on August 22, 2008. On October 17, 2007, in its Entry on Rehearing the Commission stated that while any ILEC serving less than fifty thousand access lines within the state of Ohio (small ILECs), in the authorized edge-out territory, are still required to

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comply with the adopted Rule 4901:1-7-14(D), Ohio Administrative Code (O.A.C.), and the three-year transition period, small ILECs were afforded an opportunity to file a waiver seeking relief from the adopted rule or the ordered transition period in which to reduce its access rates, upon demonstration that it is economically and or technically infeasible to comply with this rule or the transition period; and by demonstrating how this rule or the transition period is inconsistent with its current edge-out authority.

(3) On February 8, 2008, as amended on April 15, 2008, Doylestown filed a request for a permanent waiver of the edge-out access rate reductions required by the Commission's 06-1344 Opinion and Order. Through its request for a permanent waiver, Doylestown is seeking to continue to maintain the same intrastate access rates in its in-territory and edge-out service areas until the rates are changed pursuant to the outcome of the Commission's consideration in Case No. 00-127-TP-COI, *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges* (hereinafter 00-127), or elsewhere.

Doylestown notes that the Commission, in its October 17, 2007, Entry on Rehearing in this case, explicitly invited waiver applications like the one currently before the Commission. Specifically, Doylestown points out that, while the Commission, in the context of adopting Chapter 4901:1-7, O.A.C., previously rejected the granting of a waiver on a generic basis, the Commission did indicate that it would consider a waiver request on a company-specific basis regarding the reduction of intrastate access charges in a small ILEC's edge-out service areas.

Specific to the issue of access charges in the edge-out service territory, Doylestown claims that, under its permanent waiver request, such access charges would remain identical in its ILEC and edge-out service areas, and that the access charges would be reformed together as part of 00-127 (Waiver at 5).

According to Doylestown, based on the regulatory structure approved in its "edge-out" case, the company began operating in the Rittman and Marshallville exchanges and built outside plant loop facilities to new customers in the expanded service area. These customers are currently served by the same central office codes as customers in the Doylestown Exchange and have the same local calling area under the same rates, terms, and conditions. In

addition, Doylestown avers that many of these customers are served by advanced facilities such as fiber to the home. Doylestown argues that intrastate access revenue is a significant component of the business model which supports advanced facilities investments. In fact, Doylestown claims that intrastate access revenue constitutes 67 percent of its total intrastate revenue.

Doylestown argues that the new requirement regarding the out-of-territory access rate reduction is inconsistent with Doylestown's edge-out regulatory authority. Doylestown argues that: (a) the regulatory structure of its edge-out authority was set in the Finding and Order in 01-568, (b) the tariff approved in that case provides, "the services, rates, terms, and conditions of the Rittman and Marshallville Exchanges will be identical to those of the Doylestown Exchange," and (c) the identical rates, terms, and conditions include retail and access services rates which are part of the approved tariff. The company contends that it would not be economically feasible to comply with the new requirement for the following two reasons. First, Doylestown submits that the reduced revenues resulting from the lowering of its access rates in order not to exceed Embarq's access rates in the Rittman and Marshallville exchanges would be dramatic and would significantly undermine the investment that it has made relative to its edge-out expansion. Second, the company states that the costs to make the billing changes will exceed the revenues at issue. In support of its position, Doylestown explains that in order to avoid having separate billing systems, its billing rates to the edge-out customers and long distance carriers in both its incumbent service area and edge-out area are identical. Doylestown states that the cost to make the requisite billing change in order to separate out the edge-out traffic is not economically feasible. Finally, Doylestown contends that the aforementioned conditions will exacerbate the already challenging economic times that the company faces from competition and the declining line count and correspondingly declining revenues.

(4) On February 26, 2008, United Telephone Company of Ohio dba Embarq (Embarq) filed a motion to intervene in this proceeding. In support of its motion, Embarq states that the granting of Doylestown's waiver will place Embarq at a competitive disadvantage with Doylestown in Embarq's Rittman and Marshallville exchanges inasmuch as Doylestown is able to subsidize its local rates with its much higher access rates in these

exchanges. Consistent with Section 4903.221, Revised Code, and Rule 4901-1-11(A)(2), O.A.C., Embarq contends that it has a real and substantial interest in this proceeding and that the disposition of this proceeding absent Embarq's intervention will impair or impede its ability to protect its interest. Further, Embarq submits that its interest is not represented by any existing party and that the granting of intervention will not unduly delay this proceeding or unjustly prejudice any existing party.

(5) Concurrent with its motion to intervene, Embarq filed a memorandum contra Doylestown's petition and requests that the Commission schedule a hearing in this matter. First, Embarq asserts that Doylestown's waiver request should be denied because it would perpetuate the unfair competitive advantage that Doylestown has when competing with Embarq in the edge-out area due to the fact that Doylestown currently has the ability to charge higher access rates and, thus, subsidize its local service rates. To illustrate its point, Embarq states that Doylestown's residential rate is slightly more than half of Embarq's rate for residential local. Additionally, Embarq points out that its business rate in the Rittman Exchange is almost two and one-half times as great as Doylestown's and almost double that of Doylestown's in the Marshallville Exchange.

Embarq submits that Doylestown has very little incentive to raise its local service rates in light of the fact that access payments and federal universal service support account for a significant percentage of its revenue stream. Embarq believes the Commission's carrier-to-carrier rules were intended to address this concern and provide parity between competing companies by requiring small ILECs to phase-in to the access rates of the competing ILEC. To the extent that the Rule 4901:1-7-14(D), O.A.C., results in a disparity between Doylestown's in-territory access rate and its out-of-territory access rate, Embarq notes that Doylestown could lower its in-territory access rates and offset the reduction by increasing its local rates in both the in-territory and edge-out exchanges. Embarq believes that such a result is consistent with 00-127, Opinion and Order (January 11, 2001) at 18, in which the Commission ordered certain large Ohio ILECs to reduce their intrastate access rates to mirror interstate rates that resulted from the Federal Communications Commission's (FCC) May 31, 2000, decision in *In the Matter of Access Charge Reform*, CC Docket Nos. 96-262 *et al.*

In response to Doylestown's contention that compliance with the new rule will reduce its return on investment, Embarq asserts that Doylestown is not entitled to a particular return on investment with respect to its voluntary edge-out operations. Embarq emphasizes that there was always the chance that intrastate access may have been reduced.

Finally, Embarq requests that the Commission conduct a hearing on Doylestown's waiver request in order to investigate Doylestown's allegations regarding revenues, costs, and return on investments in support of its contention that Rule 4901:1-7-14(D), O.A.C., is not economically feasible.

(6) On March 6, 2008, Doylestown filed a memorandum contra Embarq's motion to intervene and reply to Embarq's memorandum contra and request for a hearing. Doylestown explains that it is not seeking a permanent waiver of Rule 4901:1-7-14(D), O.A.C. Rather, inasmuch as its edge-out authority is grandfathered pursuant to 01-568 in which its rates and regulatory structure for its edge-out operation were deemed to be the same as its ILEC service area, Doylestown clarifies that it is actually seeking a waiver of the Commission's August 22, 2007, Opinion and Order, 06-1344, at 56, 57. The company notes that on rehearing, the Commission invited waiver applications and set forth criteria by which it would evaluate such filings (Entry on Rehearing, October 17, 2007, at 18, 19).

In regard to Embarq's request for intervention, Doylestown contends that the motion should be denied due to the fact that the request is related to a rulemaking proceeding and, therefore, intervention is not appropriate. Citing *Ohio Consumers' Counsel v. PUCO* (2006), 111 Ohio St.3d 384, 387, 388, 856 N.E.2d 940, Doylestown believes that Embarq's request should be denied if there is a concern about delay or an alternative avenue exists for Embarq to pursue its concerns. Doylestown points out that, in this case, Embarq does have other methods of recourse available, such as filing a complaint pursuant to Section 4905.26, Revised Code. Referencing *In the Matter of the Application of Akron Thermal Limited Partnership for an Increase in its Rates for Steam and Hot Water Service*, Case No. 05-05-HT-AIR (Entry, June 14, 2005) at 3 (hereinafter 05-05), Doylestown states that Embarq's interest as a competitor does not constitute a real and substantial interest for the purpose of

intervention. In support of its position, Doylestown submits that the position advocated by Embarq is virtually identical to Embarq's intervention request in the Ayersville Telephone Company's edge-out application that the Commission denied in Case No. 05-1443-TP-UNC (hereinafter 05-1443), *In the Matter of the Application of Ayersville Telephone Company for Authority to Expand its Service Area Pursuant to Rule 4901:1-6-08(D), Ohio Administrative Code.*

Doylestown explains that it does not serve any business customers in its edge-out area. With respect to residential customers in the edge-out area, the company describes that before Doylestown began offering service, there were no competitive options in the Rittman and Marshallville exchanges. Doylestown reiterates that absent intrastate access revenue, it would not have made the investment in facilities to serve customers in these exchanges. Doylestown distinguishes its operations from those of Embarq inasmuch as its customers in the Rittman and Marshallville exchanges receive telephone numbers from the Doylestown central office and utilize the Doylestown local calling area.

With respect to Embarq's arguments that Doylestown assumed the risk that its access rates would not always remain the same, Doylestown responds that, to the extent that such a risk existed, it assumed that the intrastate access rates charged in its edge-out service area would be reformed with the Doylestown Exchange rates as part of 00-127.

Finally, Doylestown asserts that there is no reason for a hearing in this case inasmuch as it involves a policy determination and not a factual dispute.

(7) On March 14, 2008, Embarq filed its reply memorandum in support of its motion to intervene and request for hearing. Embarq avers that its intervention request is appropriate pursuant to Rule 4901-1-11(A) (2), O.A.C. With respect to Doylestown's suggestion that Embarq file a complaint pursuant to Section 4905.26, Revised Code, Embarq submits that such an approach would have no legitimate purpose and that it would be administratively inefficient to first grant the waiver request and then require Embarq to file a complaint.

Embarq disputes Doylestown contention that Embarq's interest as a competitor does not constitute a real and substantial interest

justifying intervention. In support of its position, Embarq states that the Commission previously granted intervention to competitors in Case No. 96-252-CT-ACE (hereinafter 96-252), *In the Matter of the Application of GTE Card Services Incorporated dba GTE Long Distance for a Certificate of Public Convenience and Necessity to Provide Competitive Interexchange Telecommunication Services in Ohio.* Embarq also distinguishes the Commission's decision in 05-1443 due to the fact that, at that time, there were no rules requiring Ayersville to cap its access charges.

In response to Doylestown's claim that it is not operationally competitive with Embarq in the Rittman and Marshallville exchanges because of the exchange prefixes and local calling areas, Embarq asserts that when a customer in an Embarq Exchange selects Doylestown, this by itself signifies that there is competition. Embarq also disputes Doylestown's contention that the Commission could not reform access charges in edge-out territories in some manner other than 00-127.

Embarq rejects Doylestown's contention that, in light of the fact that there are no significant factual issues in this matter, no hearing is necessary. Contrary to Doylestown's position, Embarq asserts that Doylestown's entire waiver application is premised on various factual assertions regarding issues such as operational efficiency, reduction of revenues, and the cost to make billing changes.

(8) On March 5, 2008, AT&T Ohio, AT&T Long Distance, AT&T Communications of Ohio Inc., and TCG Ohio (jointly, AT&T Entities) filed a motion to intervene. AT&T Entities represent that AT&T Ohio's interest in this proceeding is as a provider of local exchange telephone service and interexchange toll services. AT&T Entities identify AT&T Long Distance's interest as being a provider of interexchange toll services in Ohio. AT&T Entities also state that AT&T Communications of Ohio and TCG Ohio are competitive local exchange carriers (CLECs) that compete and exchange traffic with Doylestown.

Based on these identified interests, AT&T Entities submit that, to the extent that Doylestown's access charges are not lowered consistent with the Commission's August 22, 2007, Opinion and Order, their economic interests will be impacted. Specifically, AT&T Entities state that they will be harmed by the granting of Doylestown's request in light of the fact that they would continue

to be constrained by the access charge cap while Doylestown would not be. In support of their motion to intervene, AT&T Entities contend that their interests are not represented by any other party and that the granting of intervention will not unduly delay this proceeding or unjustly prejudice any existing party.

(9) On March 11, 2008, Doylestown filed its memorandum contra AT&T Entities' motion to intervene. Doylestown submits that because this case is related to the carrier-to-carrier rulemaking, and is not a quasi-judicial proceeding, intervention is not appropriate. Consistent with *Ohio Consumers' Counsel v. PUCO,* Doylestown asserts that intervention should be denied due to a concern of a delay or in light of the fact that an alternative avenue exists for potential intervenors to seek recourse. Specific to AT&T Entities' intervention request, Doylestown submits that, to the extent that the Commission grants the waiver request, AT&T Entities can file a complaint pursuant to Section 4905.26, Revised Code, alleging that Doylestown's access rates violate Section 4905.26, Revised Code.

Additionally, Doylestown asserts that, in accordance with 05-05 (Entry, June 14, 2005), at 3, "the fact that a company is a competitor of a regulated utility does not, of itself, constitute 'a real and substantial interest' sufficient to automatically entitle it to participate in a Commission proceeding." Further, Doylestown notes that AT&T Entities are not competing with Doylestown for residential customers in the Rittman or Marshallville exchanges.

Finally, Doylestown represents that, inasmuch as it is operating as the ILEC even outside of its incumbent service area and does not hold CLEC certification, it is not subject to carrier-to-carrier Rule 4901:1-7-14(D), O.A.C., and the requirement that it cap its access rates at the current rates of the ILEC in the CLEC's service area.

(10) On March 13, 2008, AT&T Entities filed their reply to Doylestown's memorandum contra. In response to Doylestown's assertion that intervention is not appropriate, AT&T Entities submit that had the waiver request been filed in 06-1344, there would have been no issue as to their right to respond to the submitted waiver request. AT&T Entities dismiss Doylestown's position that a separate complaint proceeding should be filed, subsequent to the waiver being approved. AT&T Entities assert that, inasmuch as they pay access charges for traffic originating or terminating in the Rittman and Marshallville exchanges, they have a real and substantial

interest in this matter. AT&T Entities believe that it is inequitable to allow an edge-out ILEC to win a customer from the incumbent provider and then proceed to charge its in-territory higher access charges, resulting in the ILEC's edge-out operations being subsidized by the incumbent in-territory operations.

(11) On March 7, 2008, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene pursuant to Section 4903.21, Revised Code, and Rule 4901-1-11, O.A.C. In support of its motion, OCC explains that, because Embarq is alleging that Doylestown's rates are anticompetitive and should be increased, the interests of residential telephone customers may be adversely affected by this case, especially if they are unrepresented in this proceeding. OCC states that its interest is to ensure that competition for residential customers is enhanced and that Embarq's position does not result in rate increases that would harm Doylestown's residential customers in both its incumbent service territory and in its edge-out territory in the Marshallville and Rittman exchanges. OCC believes that its intervention will not unduly prolong this proceeding and that its participation will significantly contribute to the development of a full record regarding the issues raised.

(12) On March 12, 2008, OCC filed initial comments regarding Doylestown's waiver request. OCC posits that Embarq's primary concern is not with the access charges that it will pay to Doylestown for calls originated or terminated to Doylestown customers in the Rittman and Marshallville exchanges. Rather, OCC argues that Embarq's primary focus centers on the basic service rates that Doylestown charges to edge-out customers in the Embarq exchanges as a result of the subsidies provided by its higher access revenue.

OCC focuses on Embarq's comparison of Doylestown's residential single line rate of $9.05 to Embarq's Rittman residential rate of $17.70 and Embarq's Marshallville residential rate of $16.05. OCC notes that there is even a greater rate disparity when you include the fact that Embarq also imposes a monthly $4.10 intrastate access fee on all of its residential customers. Additionally, since most of Doylestown's edge-out customers are likely closest to the Doylestown Exchange and furthest from Embarq's central office, they will also incur Embarq's zone charges.

While acknowledging that rate disparities are present, OCC identifies that Embarq's bundled service rates, while still higher, are more comparable to Doylestown's rates. Additionally, OCC points out that in evaluating competitiveness, the Commission should also look at local calling areas due to the fact that they can influence the attractiveness of one company's service over another. In particular, OCC notes that Doylestown local calling area includes only Akron while the Rittman and Marshallville exchanges both include a number of other exchanges.

OCC argues that denying Doylestown's waiver request may result in Doylestown electing to cease service in its edge-out territory, thus, adversely impacting Doylestown and its edge-out customers. Rather than Embarq's proposal for Doylestown to increase its in-territory and out-of-territory basic local exchange rates, OCC recommends that Embarq should lower its rates in the Rittman and Marshallville exchanges in order to meet competition.

(13) On March 28, 2008, Doylestown filed its memorandum contra OCC's motion to intervene and response to OCC's initial comments. Doylestown advocates that the motion to intervene, consistent with *Ohio Domestic Violence Network v. PUCO* (1994), 70 Ohio St.3d 311, 315, 316, 638 N.E.2d 1012, should be denied inasmuch as this is not a quasi-judicial proceeding. Additionally, Doylestown does not believe that OCC has a real and substantial interest in this case due to the fact that its primary concern relates, not to Doylestown's waiver request but, to Embarq's proposal that Doylestown's access rates be reduced and basic retail rates be increased.

(14) On April 7, 2008, OCC filed its reply to Doylestown' memorandum contra OCC's motion to intervene. OCC submits that its motion to intervene satisfies the requirements of Section 4903.221, Revised Code. OCC reiterates its contention that the interests of residential telephone subscribers may be adversely affected by this case and that the consumer interests are not represented by any other party participating in this proceeding. Additionally, OCC reiterates that, consistent with Rule 4901-1-11(A)(2), O.A.C., it has a real and substantial interest in this case.

Consistent with *Ohio Consumers' Counsel v. Pub. Util. Comm.*, OCC submits that regardless of whether or not a hearing is held, intervention should be liberally allowed so that the positions of all

persons with a real and substantial interest in the proceedings can be considered by the Commission. OCC also reiterates its claim that its intervention will not unduly prolong or delay the proceeding.

(15) On March 26, 2008, Verizon North Inc., MCImetro Access Transmission Services LLC dba Verizon Access Transmission Services, MCI Communications Inc. dba Verizon Business Services, Teleconnect Long Distance Services & Systems Co. dba Telecom USA, and TTI National Inc. (collectively, Verizon Companies) filed a motion to intervene in this proceeding. As entities that terminate calls to Doylestown, Verizon Companies assert that they have a real and substantial interest in this proceeding and are so situated that disposition of this case may impair or impede their ability to protect that interest. Further, Verizon Companies submit that their participation in this proceeding will contribute to a just a reasonable expeditious resolution of the issues raised, without unduly delaying the proceedings or unjustly prejudicing any existing party.

In support of their motion, Verizon Companies submit that if Doylestown's waiver request is granted, it will unduly benefit by deriving a significant artificial competitive advantage over every CLEC that competes for customers in the Rittman and Marshallville exchanges. Additionally, Verizon Companies submit that interexchange companies operating in the Doylestown edge-out area and ILECs terminating calls in these exchanges are entitled to reasonable access rates. Citing the Commission's Finding and Order in 06-1344, at 56, 57, Verizon Companies assert that the granting of Doylestown's waiver request would be contrary to sound public policy inasmuch as it is unfair to require other carriers to subsidize a small ILEC's competitive efforts when it ventures beyond its own service territory to attract local service customers. Verizon Companies distinguish the current scenario with concerns related to access charges and the issue of universal service specific to an ILEC's incumbent service area.

Verizon Companies support Embarq's request for a hearing and assert that Doylestown's waiver request fails to provide a detailed demonstration that it is economically and/or technically infeasible to comply with Rule 4901:1-7-14(D), O.A.C. Verizon Companies posit that the Commission was certainly looking for something more than a company's representation that it relied on the

continued existence of above-cost access charges when formulating its edge-out plan. Verizon Companies submit that to do otherwise will result in every small ILEC operating in an edge-out area to seek similar relief, thus, rendering the rule to be meaningless.

(16) On April 9, 2008, Doylestown filed its memorandum contra Verizon Companies' motion to intervene. Consistent with *Ohio Consumers' Counsel v. PUCO*, Doylestown avers that intervention should be denied in light of the fact that the waiver request is related to a rulemaking proceeding and the Verizon Companies have other recourse with the filing of a complaint case pursuant to Section 4905.26, Revised Code. Doylestown also asserts that Verizon's motion should be denied since its interests are not distinguishable from those asserted by Embarq and AT&T Entities.

Specific to Verizon Companies' allegations, Doylestown clarifies that it did not base its business plan on the assumption that its access charges would never be reduced. Rather, Doylestown explains that it premised its edge-out operations on the belief that its edge-out access charges would be identical to the access charges of the Doylestown Exchange and that its access charges would be modified on a joint basis in the context of 00-127. Doylestown asserts that because its edge-out authority requires it to operate as an ILEC, with respect to its operations, it is inconsistent to impose CLEC access rate caps upon it or permit CLEC retail pricing flexibility. Finally, Doylestown states that there is no need for a hearing in this proceeding due to the fact that Doylestown seeks to continue to charge the same access rates previously approved in 01-568.

(17) With respect to the motions to intervene filed in this proceeding by OCC, Embarq, AT&T Entities, and Verizon Companies, the Commission finds that they are reasonable and should be granted. In granting intervention, the Commission finds that the movants each have a real and substantial interest in this proceeding and that the disposition of the proceeding may impede or impair their ability to protect that interest, especially in light of the fact that their individual interests are not represented by other existing parties. Additionally, the Commission finds that the participation of OCC, Embarq, AT&T Entities, and Verizon Companies will not unduly delay the proceeding or unjustly prejudice any party. More to this point, the Commission finds that it would be inefficient to require the filing of a complaint case when the issues raised can be

timely considered in the context of this proceeding. With respect to this point, the Commission notes that each of the intervenors made detailed filings in this docket outlining their arguments in opposition to Doylestown's application.

(18) As we noted in our Opinion and Order adopting the carrier-to-carrier rules, the current access rates in a small ILEC's incumbent territory were designed to achieve a particular purpose, that being to promote universal access to telephone service in rural markets at affordable rates. That same purpose does not exist when a small ILEC chooses to compete outside of its territory. For that reason, the Commission concluded that, as a matter of public policy, such out-of-territory operations should be treated just like any other competitor. To do otherwise would place at a competitive disadvantage the in-territory ILEC, against which the edge-out company is competing. Not only would the in-territory ILEC lose customers and, thus, retail revenues, but the in-territory ILEC would then have to pay higher access rates to its edge-out ILEC competitor, thereby increasing its expenses. This would have the effect of subsidizing one ILEC's out-of-territory, competitive operations at the expense of another ILEC who also has a provider of last resort obligation in its territory.

Moreover, the Commission believes that allowing the edge-out ILEC to charge current access rates outside its territory would impede competition, by discriminating against other carriers. CLECs that choose to compete in the same area would be at an unfair disadvantage since the CLECs would be required to cap their access rates at the in-territory ILEC's access rates, yet the cap would not apply to their rival, Doylestown. Similarly, long distance companies whose customers make calls to Doylestown's edge-out customers would be disadvantaged by having to pay higher access rates if Doylestown's waiver request is granted.

It was for all these reasons that the Commission concluded as a matter of policy that edge-out ILECs should have to transition to reduced, capped access rates outside their territory. Nothing in Doylestown's waiver request convinces us that we should depart from this important public policy objective. Thus, the Commission determines that Doylestown's request for a permanent waiver should be denied.

The Commission is sensitive, however, to the fact that Doylestown made its original business decision for edging-out based on a regulatory framework that has since changed. We, therefore, noted in our order adopting the new rule on access rates that small ILECs with edge-out authority were not prohibited from filing a waiver seeking relief from adopted Rule 4901:1-7-14(D) upon a detailed demonstration that it is economically and or technically infeasible to comply with this rule.

Doylestown argues that compliance with this rule is not economically feasible because the reduced access revenues would significantly undermine its investment in the edge-out facilities. The Commission recognizes that intrastate access revenue was a significant component of Doylestown's business model for investing in the advanced facilities in the edge-out service areas. However, at the time the Commission granted Doylestown its edge-out authority in April 2001, the company was on notice that we might order an access rate reduction in the future pursuant to the then-pending Case No. 00-127-TP-COI. Doylestown acknowledges that it made the investment understanding there was a risk that the access rates upon which its business model relied may go down. The fact that those access rates have now been ordered to be reduced more than seven years later is not, by itself, a compelling reason to grant Doylestown a waiver. Indeed, when the Commission recently amended its carrier to carrier rules to cap the access rates of ILECs operating outside their territory at the competing ILECs' rates, we knew it would impact the business plans of ILECs that had previously edged out. We purposely did not flash-cut to the new lower rates, in order to allow the ILECs a year from the date of our order to adjust their business models and a full three years thereafter to transition to the lower rates. Along with the access obligations of a CLEC, the Commission granted the edge-out ILECs the same regulatory and pricing flexibility as a competing CLEC in their edge-out territory. Accordingly, Doylestown is afforded competitive pricing flexibility in its edge-out territory pursuant to the Commission's retail service rules, even though it is operating out of territory as an ILEC. Thus, we believe that Doylestown has the tools necessary to adjust its business plan to support its out-of-territory investment.

Doylestown also argues that compliance with the new requirement is not economically feasible because the costs to make billing changes would grossly exceed the revenues at issue. Currently, the

access minutes of use from edge-out customers are combined with those of in-territory ILEC customers, resulting in a single monthly access bill being sent to each long distance carrier. This billing practice has occurred due to the fact that the in-territory and edge-out traffic is currently being routed through the same switch with the same area code (NPA) and central office code (NXX). As Doylestown explains, billing system changes would be required in order to isolate the edge-out traffic and apply a different access rate to such traffic, resulting in Doylestown sending interexchange carriers separate access bills for its in-territory and edge-out service areas. The record reflects that the necessary billing system modifications would be both time and cost intensive.

As discussed above, small telephone companies, pursuant to Rule 4901:1-7-14(D), O.A.C., are afforded a three-year transition period for the purpose of implementing the requisite access reductions (See 06-1344, Opinion and Order, August 22, 2007, at 56, 57). Notwithstanding our determination that Doylestown's waiver request should be denied, In light of the unique circumstances specific to Doylestown's need to update its billing system for the purpose of complying with Rule 4901:1-7-14(D), O.A.C., the Commission finds that the company should be afforded an 18-month extension, effective August 22, 2008, of the commencement of the three-year transition period. Such an extension will provide the company with additional time for the purpose of establishing the necessary billing system changes in order to implement the requisite access reductions and, to the extent desired, seek alternative methods to recover such billing system expenditures. The granted extension will also afford the company with the opportunity to amend its business plan accordingly, including the potential offering of market-based retail rates.

Finally, the Commission notes that all other similarly situated edge-out companies requiring billing system updates in order to comply with Rule 4901:1-7-14(D), O.A.C., may file, on or before June 11, 2008, a motion seeking a similar 18-month extension of the three-year transition period. All such applications that satisfactorily demonstrate that the applicant is similarly situated to Doylestown relative to a billing system update shall be automatically approved 14 days after filing unless otherwise suspended by a Commission or attorney examiner entry.

(19) On February 8, 2008, Doylestown filed a motion for a protective order relative to specific information contained in its application. Doylestown explains that the confidential information consists of number of customers, dollars invested, revenues generated, and other business information related to serving its competitive edge-out service territory and complying with the Commission's edge-out access rate reduction requirements. Doylestown considers the information to be competitively sensitive trade secrets as defined by Section 1333.61(D), Revised Code.

(20) The motion for a protective order is reasonable and should be granted.

(21) Regarding Embarq's motion for a hearing, the Commission determines that a hearing is not warranted at this time, especially in light of the fact that, pursuant to Finding (18), Doylestown's request for a waiver is denied.

It is, therefore,

ORDERED, That the motions to intervene are granted in accordance with Finding (17). It is, further,

ORDERED, That Doylestown's waiver request is denied in accordance with Finding (18). It is, further,

ORDERED, That, consistent with Finding (18), Doylestown is granted an 18-month extension of the three-year transition period. It is, further,

ORDERED, That, in accordance with Finding (18), similarly situated edge-out companies can request an 18-month extension of the three-year transition period. It is, further,

ORDERED, That Embarq's request for a hearing in this proceeding is denied. It is, further,

ORDERED, That the Docketing Division maintain for 18 months from the date of this Finding and Order, all documents that were filed under seal in conjunction with Doylestown's motion for a protective order filed February 8, 2008. 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

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

JSA;geb

Entered in the Journal

MAY 28 2008

Reneé J. Jenkins
Secretary