

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of :
United Telephone Company of Ohio :
d/b/a Embarq, :

Complainant, : Case No. 08-616-TP-PWC

v. :

Village of Jefferson, Ohio, :

Respondent. :

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ANSWER TO COMPLAINT

The Village of Jefferson, Ohio, (hereinafter "Jefferson"), by and through counsel, hereby answers the Complaint filed against it by the United Telephone Company of Ohio, doing business as "Embarq" (hereinafter "Embarq") in the above-captioned case as follows:

FIRST DEFENSE

1. Jefferson admits, based upon information and belief that the Embarq is a public utility as alleged in paragraph 1 of Embarq's complaint.
2. Jefferson admits that it is an Ohio municipal corporation as alleged in paragraph 2 of Embarq's complaint and that right of way fees collected by Jefferson are subject to applicable laws. Jefferson denies all other averments set forth in the paragraph 2 of Embarq's complaint either because Jefferson is without knowledge or information sufficient to form a belief as to the truth of the averments therein, or because such averments are not true, or both.
3. Jefferson admits that the Council of the Village of Jefferson passed Second Amended Ordinance Number 07-0-2714, and that said Ordinance was signed by the Mayor of Jefferson on December 17, 2007. Jefferson admits that the Ordinance attached to Embarq's complaint as Exhibit A is a true and accurate

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copy of that Ordinance. Jefferson also admits that it sent Embarq a courtesy notification of implementation of the Ordinance on April 22, 2008, as alleged in paragraph 3 of Embarq's complaint. Jefferson denies all other averments set forth in the paragraph 3 of Embarq's complaint either because Jefferson is without knowledge or information sufficient to form a belief as to the truth of the averments therein, or because such averments are not true, or both.

4. Jefferson admits that Embarq provides telecommunications service in Jefferson pursuant to a valid franchise agreement and that Embarq occupies and uses Jefferson's right of ways. Embarq is subject to Jefferson's right of way ordinance and Jefferson denies all other averments set forth in the paragraph 4 of Embarq's complaint either because Jefferson is without knowledge or information sufficient to form a belief as to the truth of the averments therein, or because such averments are not true, or both.
5. Jefferson denies all allegations set forth in paragraph 5 of Embarq's complaint.
6. In response to the allegations set forth in paragraph 6 of Embarq's complaint, Jefferson hereby incorporates its previous answers to the averments set forth in paragraph's 1 through 5 of Embarq's complaint and further denies any additional allegations set forth in paragraph 6 of Embarq's complaint.
7. Jefferson admits that applications for General Right of Way Permits or amendments or renewals require payment of a \$300 application fee and further denies any additional allegations set forth in paragraph 7 of Embarq's complaint.
8. Jefferson admits that the annual General Right of Way Permit fee is \$1,500 and further denies any additional allegations set forth in paragraph 8 of Embarq's complaint.

9. There appears to be no numbered paragraphs 9 or 10 set forth in Embarq's complaint.
10. Jefferson admits the allegations set forth in paragraph 11 of Embarq's complaint.
11. Jefferson denies the allegations set forth in paragraph 12 of Embarq's complaint because those allegations are based on language set forth in a comprehensive statute and the language set forth in paragraph 12 of Embarq's complaint is taken out of context. Jefferson denies all additional allegations set forth in paragraph 12 of Embarq's complaint.
12. Jefferson denies the allegations set forth in paragraph 13 of Embarq's complaint.
13. Jefferson denies the allegations set forth in paragraph 14 of Embarq's complaint.
14. In response to the allegations set forth in paragraph 15 of Embarq's complaint, Jefferson hereby incorporates its previous answers to the averments set forth in paragraph's 1 through 14 of Embarq's complaint and further denies any additional allegations set forth in paragraph 15 of Embarq's complaint.
15. Jefferson denies the allegations set forth in paragraph 16 of Embarq's complaint.
16. Jefferson denies the allegations set forth in paragraph 17 of Embarq's complaint.
17. Jefferson admits that the Ordinance includes the phrase set forth in Paragraph 18 of Embarq's complaint and further denies all other allegations set forth in paragraph 18 of Embarq's complaint as the verbiage set forth therein is taken out of context and is therefore misleading.
18. Jefferson admits that the Ordinance includes the phrase set forth in Paragraph 19 of Embarq's complaint and further denies all other allegations set forth in paragraph 19 of Embarq's complaint as the verbiage set forth therein is taken out of context and is therefore misleading.
19. Jefferson denies the allegations set forth in paragraph 20 of Embarq's complaint

20. In response to the allegations set forth in paragraph 21 of Embarq's complaint, Jefferson hereby incorporates its previous answers to the averments set forth in paragraph's 1 through 20 of Embarq's complaint and further denies any additional allegations set forth in paragraph 21 of Embarq's complaint.
21. Jefferson denies the allegations set forth in paragraph 22 of Embarq's complaint because those allegations are based on language set forth in a comprehensive statute and the language set forth in paragraph 22 of Embarq's complaint is taken out of context. Jefferson denies all additional allegations set forth in paragraph 22 of Embarq's complaint.
22. Jefferson denies the allegations set forth in paragraph 23 of Embarq's complaint
23. In response to the allegations set forth in paragraph 24 of Embarq's complaint, Jefferson hereby incorporates its previous answers to the averments set forth in paragraph's 1 through 23 of Embarq's complaint and further denies any additional allegations set forth in paragraph 24 of Embarq's complaint.
24. Jefferson denies the allegations set forth in paragraph 25 of Embarq's complaint
25. Jefferson admits that under certain circumstances set forth in the Ordinance, Jefferson may require permit holders to temporarily or permanently remove or rearrange its facilities and further denies all other allegations set forth in paragraph 26 of Embarq's complaint.
26. Jefferson denies the allegations set forth in paragraph 27 of Embarq's complaint.
27. Jefferson denies the allegations set forth in paragraph 28 of Embarq's complaint
28. Jefferson denies the allegations set forth in paragraph 29 of Embarq's complaint
29. In response to the allegations set forth in paragraph 30 of Embarq's complaint, Jefferson hereby incorporates its previous answers to the averments set forth in

paragraph's 1 through 29 of Embarq's complaint and further denies any additional allegations set forth in paragraph 30 of Embarq's complaint.

30. Jefferson denies the allegations set forth in paragraph 31 of Embarq's complaint

31. Jefferson hereby specifically denies any and all allegations set forth in Embarq's complaint not herein specifically admitted to be true.

SECOND DEFENSE

32. The Complaint must be dismissed for failure to state a claim.

THIRD DEFENSE

33. The Complaint fails to state a reasonable ground for proceeding to hearing as required by the provisions of Ohio Revised Code Section 4905.26.

FOURTH DEFENSE

34. Embarq has failed to file its complaint within thirty (30) days after the date that Embarq first became subject to Ordinance 07-0-2714, as required by section 4939.06 of the Ohio Revised Code.

FIFTH DEFENSE

35. Embarq's complaint fails to comply with the applicable statute of limitations.

SIXTH DEFENSE

36. Since the commission has not yet found reasonable grounds for stating a complaint under section 4939.06 of the Ohio Revised Code, the commission may not suspend the operation of Jefferson's right of way ordinance pursuant to section 4939.06(B) of the Ohio Revised Code at this time.

SEVENTH DEFENSE

37. Jefferson has fully complied with all statutory requirements set forth in chapter 4939 of the Ohio Revised Code and otherwise in adopting Jefferson's comprehensive right of way ordinance.

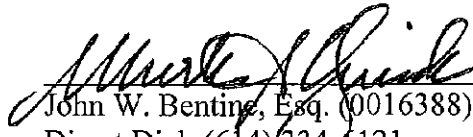
EIGHTH DEFENSE

38. Jefferson hereby specifically reserves the right to assert any and all additional affirmative defenses which are or may become available to it during the discovery phase of the current complaint.

DEMAND FOR RELIEF

WHEREFORE, Jefferson requests that the Complaint be dismissed with prejudice and that Jefferson be awarded any further relief, legal or equitable, to which Jefferson may be entitled, including but not limited to an order pursuant to section 4939.06(C) establishing that Jefferson's public way permit fee is just and reasonable.

Respectfully submitted,

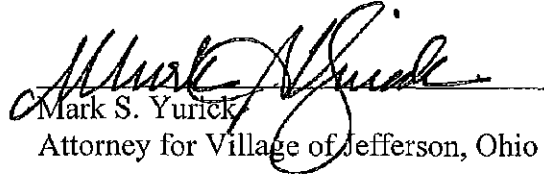

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**Attorneys for Respondent Village of Jefferson,
Ohio**

CERTIFICATE OF SERVICE

A copy of Respondent Village of Jefferson, Ohio's *Answer to the Complaint* was served, via prepaid U.S. regular mail, upon the parties at the addresses listed below on the 7th day of July, 2008.


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Complainant