

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of United)
Telephone Company of Ohio d/b/a Embarq) Case No. 08-1118-TP-WVR
for Out-of-Service Grace Period under)
Minimum Telephone Service Standards.)

**COMMENTS ON EMBARQ’S REQUEST TO AVOID PAYING CREDITS
TO CERTAIN CUSTOMERS FOR SERVICE OUTAGES
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”), an intervenor in this proceeding on behalf of residential utility consumers,¹ opposes in part the request by the United Telephone Company of Ohio d/b/a Embarq (“Embarq” or “Company”) to avoid paying credits to certain customers by proposing to add 48 hours to the calculations for customer credits under the Minimum Telephone Service Standards (“MTSS”) during the September 15-19, 2008 period. Because of a windstorm that occurred in Ohio on September 14, 2008, Embarq asked the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to allow the Company to avoid paying credits to customers who experienced a service outage, or whose repair appointment or commitment was missed, during the five days after the windstorm.²

¹ OCC’s motion to intervene was granted by an Entry issued on November 6, 2008 (at 3). The Entry (at 3) also suspended the “grace period” request.

² Application (September 24, 2008).

The Company now seeks the “grace period” to avoid paying customer credits in 55 exchanges.³ As discussed herein, a review of the daily trouble report totals for each exchange shows that, **at most**, Embark qualifies for a “grace period” under the Commission’s rules for the following dates and exchanges:

- ▶ September 15-19: Lebanon, Mansfield, Mount Vernon, Pataskala, Warren and Wooster.
- ▶ September 15-18: Millersburg and Waynesville.
- ▶ September 15-17: Bellville, Centerburg, Danville, Frazeyburg, Fredericktown, Gambier, Killbuck, Lexington, Morrow, Mount Gilead, Mount Sterling and Sunbury.
- ▶ September 15-16: Adario, Alexandria, Croton, Eaton, Greenville, Hebron, Johnstown, Kinsman, Lucas, Mason, Newton Falls, Rittman, and Shreve.
- ▶ September 15: Bartlett, Berlin Center, Bradford, Cardington, Chesterville, Cortland, Junction City, Kidron, Lake Milton, McConnelsville, New Lyme, New Paris, Orrville, Utica-Homer and Wayland.
- ▶ September 16: Adamsville, Camden, Glenmont, Martinsburg and Shiloh.

As discussed in these Comments, however, anomalies in some of the exchanges cast doubt on whether the data provided by Embark include trouble reports that should not be included in the “grace period” computations.⁴ The Commission should also determine

³ See Embark’s Supplemental Waiver Information (October 24, 2008) (“Supplement”) at 2. The exchanges named in the Supplement are Adamsville, Adario, Alexandria, Bartlett, Bellville, Berlin Center, Bradford, Camden, Cardington, Centerburg, Chesterville, Cortland, Croton, Danville, Eaton, Frazeyburg, Fredericktown, Gambier, Glenmont, Glouster, Greenville, Hebron, Holmesville, Johnstown, Junction City, Kidron, Killbuck, Kinsman, Lake Milton, Lebanon, Lexington, Lucas, Mansfield, Martinsburg, Mason, McConnelsville, Millersburg, Morrow, Mount Gilead, Mount Sterling, Mount Vernon, New Lyme, New Paris, Newton Falls, Orrville, Pataskala, Rittman, Shiloh, Shreve, Sunbury, Utica-Homer, Warren, Wayland, Waynesville and Wooster. Embark had originally named 88 exchanges, but withdrew nine “exchanges” because they were “subtending central offices to the main exchange office,” and withdrew another 24 exchanges “that did not have at least 10 out-of-service reports in a given day of the requested grace period.” Id.

⁴ Specifically, Adamsville, Camden, Cortland, Eaton, Frazeyburg, Glenmont, Greenville, Hebron, Lebanon, Lexington, Martinsburg, McConnelsville, Shiloh, Sunbury, Warren and Wooster.

whether the trouble reports for September 18 and 19 in at least the Mansfield, Mount Vernon, Warren and Wooster exchanges are out of the ordinary for those exchanges.

In addition, the Commission should reject the Application for the Glouster and Holmesville exchanges. The Glouster exchange did not have **more than** ten trouble reports in any one day and thus does not qualify for a “grace period” under the MTSS. The Holmesville exchange had only one day – September 18 – with more than ten trouble reports, which do not appear to be related to the windstorm.

II. THE APPLICABLE LAW

The MTSS require local exchange carriers (“LECs”) to provide credits to customers if service outages are not repaired in the time required by the MTSS, or if LECs miss commitments or appointments to repair customers’ service. LECs must credit one full month of a customer’s regulated local service charges if the customer’s service is out more than 72 hours, including weekends and holidays.⁵ LECs also must credit at least one-half of a customer’s monthly regulated service charges if the LEC fails to meet a repair commitment or repair appointment with the customer.⁶

Under the MTSS, a LEC may ask for permission to add 48 hours to the timeframes for calculating the customer credits under Rules 8(C)(1) and 8(C)(2) if either of two conditions exist: the LEC experiences “at least a 300% increase in the number of out-of-service reports as compared to the average number of out-of-service reports for the affected month(s) of the three previous years,”⁷ or there was a “declaration of a state of

⁵ Ohio Adm. Code 4901:1-5-08(C)(1) (“Rule 8(C)(1)”).

⁶ Ohio Adm. Code 4901:1-5-08(C)(2) (“Rule 8(C)(2)”).

⁷ Ohio Adm. Code 4901:1-5-08(D)(1)(a).

emergency by the governor or a duly authorized county official for the county in which the exchange is located.”⁸ In this proceeding, Governor Strickland declared a state of emergency for Ohio due to the windstorm that occurred in the state on September 14.⁹

The MTSS contain a limitation on “grace periods.” Only exchanges that had eleven or more daily out-of-service reports are eligible for a “grace period”: “[e]xchanges with ten or fewer daily out-of-service reports during the requested grace period are not eligible for this grace period.”¹⁰ As discussed below, Embarq does not meet this standard for much of the September 15-19 timeframe in most of the exchanges.

III. REVIEW OF EMBARQ’S APPLICATION AND SUPPLEMENT

The Supplement provided information regarding the total number of out-of-service trouble reports in each exchange for the entire September 14-19 timeframe.¹¹ OCC obtained from Embarq the number of daily out-of-service trouble reports for each exchange during that period. The following table provides the number of out-of-service trouble reports for each affected exchange for each day of the September 14-19 timeframe. The shaded areas show the days in which an exchange did not have more than ten out-of-service trouble reports, as required for a “grace period” under Rule 8(D)(2), and thus do not qualify for a “grace period.”

⁸ Ohio Adm. Code 4901:1-5-08(D)(1)(b).

⁹ Application at 1.

¹⁰ Ohio Adm. Code 4901:1-5-08(D)(2) (“Rule 8(D)(2)”).

¹¹ Although Embarq is seeking a “grace period” for the September 15-19 timeframe (Supplement at 1), the Supplement includes trouble reports that occurred on September 14 in the total number of trouble reports.

Exchange	9/14*	9/15	9/16	9/17	9/18	9/19
Adamsville	1	2	12	0	0	0
Adario	0	68	21	3	2	3
Alexandria	3	25	32	1	3	2
Bartlett	6	37	4	2	2	2
Bellville	6	19	58	11	4	4
Berlin Center	0	23	4	3	0	1
Bradford	2	12	1	1	0	1
Camden	1	4	15	4	1	4
Cardington	2	17	6	1	2	3
Centerburg	13	51	117	70	6	9
Chesterville	4	11	7	3	2	0
Cortland	9	102	7	6	8	12
Croton	1	22	17	0	0	1
Danville	4	46	61	55	5	4
Eaton	4	118	16	7	17	8
Frazeytsburg	2	38	99	22	9	4
Fredericktown	5	84	75	15	6	17
Gambier	1	22	21	15	5	2
Glenmont	0	7	13	7	5	2
Glouster	2	6	10	2	6	5
Greenville	11	23	13	7	8	5
Hebron	1	28	15	5	12	7
Holmesville	0	3	0	0	47	1
Johnstown	1	16	19	7	4	4
Junction City	0	65	3	3	1	1
Kidron	0	37	6	4	1	0
Killbuck	1	23	24	11	10	5
Kinsman	3	37	13	3	6	4
Lake Milton	0	32	4	2	3	1
Lebanon	29	105	94	22	12	13
Lexington	5	37	17	32	7	3
Lucas	4	17	32	9	2	7
Mansfield	39	167	79	52	46	40
Martinsburg	9	9	49	8	2	2
Mason	17	66	55	10	4	4
McConnelsville	7	28	8	17	8	1
Millersburg	4	78	78	34	11	7
Morrow	23	81	106	12	7	3
Mount Gilead	7	39	11	11	4	5
Mount Sterling	5	65	58	32	7	10
Mount Vernon	14	218	205	119	68	29
New Lyme	0	20	10	0	3	2
New Paris	6	34	4	2	1	1

* – Embarq did not seek a “grace period” for September 14, but the number of trouble reports for September 14 was included in the total trouble reports that Embarq identified for each exchange. OCC includes the September 14 trouble reports only to show an accurate depiction of the information provided by Embarq.

Exchange	9/14*	9/15	9/16	9/17	9/18	9/19
Newton Falls	1	15	21	9	7	1
Orrville	8	21	3	3	9	3
Pataskala	4	75	44	28	28	19
Rittman	4	26	29	4	1	5
Shiloh	0	4	42	8	4	5
Shreve	3	17	26	3	1	2
Sunbury	6	183	22	18	10	12
Utica-Homer	2	13	8	6	2	2
Warren	21	171	61	119	42	33
Wayland	0	33	0	1	1	1
Waynesville	7	21	39	16	11	5
Wooster	15	84	55	30	15	21

* – Embarq did not seek a “grace period” for September 14, but the number of trouble reports for September 14 was included in the total trouble reports that Embarq identified for each exchange. OCC includes the September 14 trouble reports only to show an accurate depiction of the information provided by Embarq.

The above table shows that Embarq did not have more than ten trouble reports in the Glouster exchange on any day during the September 15-19 timeframe, as required for a “grace period” under the MTSS. Thus, the Commission should deny Embarq’s “grace period” request for that exchange.

In addition, the number of trouble reports in the Holmesville exchange did not exceed the threshold for a “grace period” until September 18 – four days after the windstorm occurred. It thus seems unlikely that the trouble reports on September 18 in the Holmesville exchange were caused by the windstorm. The Commission should deny Embarq’s “grace period” request for the Holmesville exchange.

The information in the table also shows that specific days should be excluded for several other exchanges:

- The 12 trouble reports identified in the Cortland exchange on September 19 occurred five days after the windstorm, and the three days preceding September 19 all had fewer than 11 trouble reports in that exchange.

- ▶ The 17 trouble reports identified in the Eaton exchange on September 18 occurred four days after the windstorm, and there were only seven trouble reports in that exchange on September 17.
- ▶ The 17 trouble reports identified in the Fredericktown exchange on September 19 occurred five days after the windstorm, and there were only six trouble reports in that exchange on September 18.
- ▶ The 12 trouble reports identified in the Hebron exchange on September 18 occurred four days after the windstorm, and there were only five trouble reports in that exchange on September 17.
- ▶ The 17 trouble reports identified in the McConnelsville exchange on September 17 occurred three days after the windstorm, and there were only eight trouble reports in that exchange on September 16.
- ▶ The 12 trouble reports identified in the Sunbury exchange on September 19 occurred five days after the windstorm, and there were only ten trouble reports in that exchange on September 18.

Because these trouble reports occurred several days after the windstorm and were preceded by one or more days where the number of trouble reports in these exchanges was below the threshold for a “grace period” under the MTSS, it seems likely that the outages were not caused by the windstorm. It is also possible that the trouble reports involve repeat trouble reports, which should not be included for “grace period” purposes. Thus, the above-mentioned exchanges should not qualify for a “grace period” for those specific days.

Based on this analysis, Embarq, at most, would qualify for a “grace period” for the following dates and exchanges:

- ▶ September 15-19: Lebanon, Mansfield, Mount Vernon, Pataskala, Warren and Wooster.
- ▶ September 15-18: Millersburg and Waynesville.
- ▶ September 15-17: Bellville, Centerburg, Danville, Frazeyburg, Fredericktown, Gambier, Killbuck, Lexington, Morrow, Mount Gilead, Mount Sterling and Sunbury.

- ▶ September 15-16: Adario, Alexandria, Croton, Eaton, Greenville, Hebron, Johnstown, Kinsman, Lucas, Mason, Newton Falls, Rittman, and Shreve.
- ▶ September 15: Bartlett, Berlin Center, Bradford, Cardington, Chesterville, Cortland, Junction City, Kidron, Lake Milton, McConnelsville, New Lyme, New Paris, Orrville, Utica-Homer and Wayland.
- ▶ September 16: Adamsville, Camden, Glenmont, Martinsburg and Shiloh.

There are questions, however, about several of these exchanges, as well.

The Lexington, Warren and Wooster exchanges have strange “spikes” in the number of trouble reports several days after the windstorm. In the Lexington exchange, there were 37 trouble reports on September 15, the day after the windstorm. That number dropped to 17 on September 16, but jumped to 32 on September 17 – three days after the windstorm.

In the Warren exchange, there were 171 trouble reports on September 15, and only 61 on September 16. But on September 17, the number of trouble reports nearly doubled, to 119.

In the Wooster exchange, the number of trouble reports diminished from 84 on September 15 to 15 on September 18. But on September 19 – five days after the storm – the number increased to 21.

Again, it appears that these sudden increases in trouble reports, occurring several days after the windstorm, were not caused by the windstorm. Thus, based on the available information, Embarq should not qualify for a “grace period” to avoid paying MTSS-provided credits to customers in the Lexington and Warren exchanges for September 17 and the Wooster exchange for September 19, even though the number of

trouble reports for these dates and exchanges exceeded the threshold for a “grace period” under the MTSS.

In addition, throughout the September 15-19 timeframe, the Mansfield, Mount Vernon, Warren and Wooster exchanges had considerably higher numbers of out-of-service trouble reports than the threshold for a “grace period.” The Commission should determine whether the high number of outages was due to the windstorm, or was ordinary for these exchanges.

IV. CONCLUSION

A “grace period” could have the effect of reducing, or even eliminating, credits under the PUCO’s MTSS for Embark customers, who had to endure service outages during the September 15-19 period when they may have especially needed service. To ensure that Embark’s residential customers who had to endure service outages during the September 15-19, 2008 timeframe receive the MTSS credits for which they are entitled, the Commission should deny Embark’s “grace period” request for those days in which an exchange did not have more than ten out-of-service trouble reports.

As discussed above, Embark does not qualify at all for a “grace period” in the Gloucester exchange. In addition, the outages in the Holmesville exchange do not appear to be related to the windstorm, and thus the exchange should not qualify for a “grace period.” In order to protect consumers, the Commission should limit any “grace period” in the other exchanges to the days discussed herein, and should further examine the nature of trouble reports in the Lexington, Mansfield, Mount Vernon, Warren and Wooster exchanges, as OCC recommends.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments by the Office of the Ohio Consumers' Counsel was sent by First Class United States Mail, postage prepaid, to the persons listed below on this 13th day of November 2008.

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in

Case No(s). 08-1118-TP-WVR

Summary: Comments Comments on Embark's Request to Avoid Paying Credits to Certain Customers for Service Outages 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