

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**EMBARQ'S RESPONSE TO COMMENTS FILED BY OFFICE OF OHIO
CONSUMERS' COUNSEL IN OPPOSITION TO EMBARQ'S APPLICATION
FOR OUT-OF-SERVICE GRACE PERIOD**

On September 24, 2008, United Telephone Company of Ohio d/b/a Embarq ("Embarq") filed an application seeking an additional forty-eight hour grace period to clear out-of-service trouble reports as a result of severe weather emanating from the remnants of Hurricane Ike in numerous counties throughout Ohio. Embarq filed this application for waiver under Rule 4901:1-5-08(D)(1)(b). That rule provides for a grace period when there is: "Any declaration of a state of emergency by the governor or duly authorized county official for the county in which the exchange was located." In its application, Embarq showed that the Governor declared a state of emergency in all the counties for which a waiver was sought.

In addition Rules 4901:1-5-08(D)(2) and (3) state:

- (2) Exchanges with ten or fewer daily out-of-service reports during the requested grace period are not eligible for the grace period.
- (3) Supplemental documentation sufficient to justify the request for the grace period shall be filed within 30 days of the initial grace period request.

In accordance with Rule 4901:1-5-08(D)(3), Embarq filed its supplemental documentation on October 24, 2008, reducing to 55 the number of exchanges impacted by the windstorm of September 14.. The number of exchanges was reduced as actual

trouble report data were available indicating which exchanges had more than ten daily out-of-service reports during the requested grace period.

On November 13, 2008 the Office of the Ohio Consumers' Counsel ("OCC") filed comments opposing Embarq's request for the grace period. OCC has misinterpreted the Rule 8D by eliminating each day that had fewer than ten trouble reports on that day. Rule 4901:1-5-08(D)(2) states: "Exchanges with ten or fewer daily out-of-service reports **during the requested grace period** are not eligible for the grace period." [emphasis added] OCC has misinterpreted the rule to require more than ten out of service reports *per day for each and every day* of the grace period.

Embarq submits that the rule does not require 11 or more out-of-service reports for each day of the grace period, but rather excludes exchanges that did not have 11 or more out-of-service reports during any day in the entire grace period. It would be illogical to read the rule as OCC does. Force majeure events may occur on just one day, as was the case with the windstorm. Therefore, most out-of-service reports are likely to be made the day of or the day after the event, not spread over the entire grace period. Thus, it is more reasonable to conclude that the intent of the Rule is to allow a waiver for exchanges that had more than ten out-of-service reports during the entire waiver period and not for each and every day of the period.

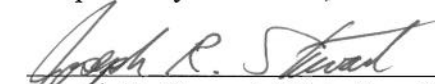
OCC also claims that reports that occurred several days after the windstorm are not eligible. Because of the electrical outages caused by the storm, it is a reasonable expectation that not all reports would be made the day after the storm.

Finally, OCC argues that certain exchanges should not be eligible for the grace period because there were so called "strange spikes" in the number of trouble reports

several days after the windstorm.¹ OCC speculates that these “spikes” were not caused by the windstorm.² But that speculation is unfounded. There is no reason to believe that all outages would occur immediately after the windstorm. And it is even less likely that every outage that occurred immediately after the windstorm would be reported in the day after the windstorm. If a customer’s phone were out of service as a result of the windstorm, the customer might well be unable to report the problem immediately. Furthermore, because many customers experienced power outages also, it is logical to assume that customers placed a higher priority on reporting the power outages.

Embarq’s request for a grace period satisfies the requirements of the applicable rules. The Governor had declared a state of emergency for each of the counties in which the Embarq exchanges are located. And each of the exchanges had at least 11 daily out-of-service reports during one or more of the days in the grace period. Embarq submits that the correct interpretation of rule 4901:1-5-08(D)(2) is that any exchange with 11 or more out-of-service reports during any day within the requested grace period is eligible.

Respectfully submitted,



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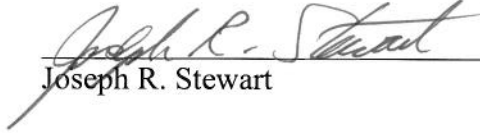
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¹ OCC Comments at 8.

² Id.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Response was served via first class mail, postage prepaid this 24th day of November 2008 to the persons listed below.



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Summary: Response of United Telephone Company of Ohio d/b/a Embarq to comments filed by Office of Ohio Consumers' Counsel in opposition to Embarq's application for out-of-service grace period. electronically filed by Sonya I Summers on behalf of United Telephone Company of Ohio d/b/a Embarq