

**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 RESPONSE TO THE PUCO STAFF'S DATA
REQUEST REGARDING EMBARQ'S APPLICATION TO AVOID PAYING
CREDITS TO CUSTOMERS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

In this proceeding,¹ the United Telephone Company of Ohio d/b/a Embarq (“Embarq” or “Company”) is trying to avoid paying credits to customers in 55 exchanges² who were out of service or whose repair appointment or commitment was missed during the September 15-19, 2008 period. Embarq asserts that a windstorm that occurred in Ohio on September 14, 2008 prevented the Company from making repairs as required by the Minimum Telephone Service Standards (“MTSS”). Embarq asked the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to grant the Company

¹ Application (September 24, 2008).

² See Embarq’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, Fazeysburg, 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.

a “grace period” under Ohio Adm. Code 4901:1-5-08(D), which would allow Embarq to avoid paying customer credits by adding 48 hours to the calculations for customer credits under the MTSS.

In response to a request by the PUCO Staff, on March 24, 2009 Embarq docketed information regarding the number of trouble reports in each exchange for September 2005, September 2006 and September 2007 (“three-year data”). The Office of the Ohio Consumers’ Counsel (“OCC”), an intervenor in this proceeding on behalf of residential utility consumers,³ comments on the three-year data. As discussed herein, the three-year data do not support the full waiver request sought by Embarq. Instead, the three-year data bolster OCC’s recommendation for limiting the number of days that Embarq would be allowed a “grace period.”⁴ The data also support further limiting the “grace period,” beyond OCC’s original recommendation, in the Greenville, Lebanon, Mansfield, Mount Vernon, Pataskala, Warren and Wooster exchanges.

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. A LEC 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 A LEC also must

³ 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.

⁴ See OCC Comments (November 13, 2008) (“Initial Comments”) at 4-9.

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

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

The MTSS contain a third requirement for a “grace period,” however. Exchanges are eligible for a “grace period” on those days during the time period in question that had eleven or more storm-related out-of-service reports: “Exchanges 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 the MTSS criteria for a “grace period” for much of the September 15-19 timeframe in most of the exchanges for which the “grace period” is sought.

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).

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

⁹ See Press Release, “Governor Strickland Declares State of Emergency,” September 15, 2008 (available at <http://www.governor.ohio.gov/News/PressReleases/2008/September2008/News91508/tabid/831/Default.aspx>).

¹⁰ Ohio Adm. Code 4901:1-5-08(D)(2) (“Rule 8(D)(2)”). The Commission has applied the principles of the rule so that a “grace period” would not be allowed for an exchange on days that had ten or fewer trouble reports during the timeframe under consideration. See *In the Matter of the Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio and Verizon North Inc. Relating to the Minimum Telephone Service Standards*, Case No. 07-511-TP-UNC, Finding and Order (March 5, 2008).

III. REVIEW OF EMBARQ'S APPLICATION AND DATA

As discussed in OCC's initial Comments, a review of the daily trouble report totals provided in Embarq's Supplement for each exchange shows that, **at most**, Embarq qualifies for a "grace period" under the Commission's rules for only 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, McConnellsville, New Lyme, New Paris, Orrville, Utica-Homer and Wayland.
- ▶ September 16: Adamsville, Camden, Glenmont, Martinsburg and Shiloh.¹¹

OCC also expressed concern in its initial Comments that, based on anomalies in some of the exchanges (Adamsville, Camden, Cortland, Eaton, Frazeyburg, Glenmont, Greenville, Hebron, Lebanon, Lexington, Martinsburg, McConnellsville, Shiloh, Sunbury, Warren and Wooster), Embarq may have included trouble reports in the data provided by Embarq that should not be included in the "grace period" computations.¹² OCC recommended that the Commission also determine whether the trouble reports for

¹¹ See Initial Comments at 2.

¹² Id. at 9.

September 18 and 19 in at least the Mansfield, Mount Vernon, Warren and Wooster exchanges are out of the ordinary for those exchanges.¹³

In addition, OCC urged the Commission to reject the Application for the Glouster and Holmesville exchanges. As OCC explained, the data in the Supplement showed that 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 Rule 8(D)(2).¹⁴ Also, the Holmesville exchange had only one day – September 18 – with more than ten trouble reports, but those do not appear to be related to the windstorm.¹⁵

A review of the three-year data that Embarq filed on March 24, 2009 supports OCC’s position. The following table compares the trouble report data that Embarq provided in its Supplement and the three-year-data, including the daily average for September for each exchange over the three years.¹⁶ (The shaded areas in the table show the days in which an exchange did not have eleven or more 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.”)

¹³ Id.

¹⁴ Id. at 6.

¹⁵ Id.

¹⁶ To determine the daily average, OCC divided the total number of trouble reports that Embarq claimed for each exchange in September 2005, September 2006 and September 2007 by 90, the number of days in the three months combined.

Exchange	9/14*	9/15	9/16	9/17	9/18	9/19	3-Year Total	3-Year Daily Avg
Adamsville	1	2	12	0	0	0	87	1.0
Adario	0	68	21	3	2	3	90	1.0
Alexandria	3	25	32	1	3	2	230	2.6
Bartlett	6	37	4	2	2	2	67	0.7
Bellville	6	19	58	11	4	4	528	5.9
Berlin Center	0	23	4	3	0	1	137	1.5
Bradford	2	12	1	1	0	1	238	2.6
Camden	1	4	15	4	1	4	251	2.8
Cardington	2	17	6	1	2	3	205	2.3
Centerburg	13	51	117	70	6	9	406	4.5
Chesterville	4	11	7	3	2	0	265	2.9
Cortland	9	102	7	6	8	12	563	6.3
Croton	1	22	17	0	0	1	117	1.3
Danville	4	46	61	55	5	4	244	2.7
Eaton	4	118	16	7	17	8	537	6.0
Fazeysburg	2	38	99	22	9	4	578	6.4
Fredericktown	5	84	75	15	6	17	247	2.7
Gambier	1	22	21	15	5	2	198	2.2
Glenmont	0	7	13	7	5	2	57	0.6
Glouster	2	6	10	2	6	5	300	3.3
Greenville	11	23	13	7	8	5	1051	11.7
Hebron	1	28	15	5	12	7	482	3.4
Holmesville	0	3	0	0	47	1	52	0.6
Johnstown	1	16	19	7	4	4	668	7.4
Junction City	0	65	3	3	1	1	98	1.1
Kidron	0	37	6	4	1	0	104	1.2
Killbuck	1	23	24	11	10	5	105	1.2
Kinsman	3	37	13	3	6	4	157	1.7
Lake Milton	0	32	4	2	3	1	147	1.6
Lebanon	29	105	94	22	12	13	947	10.5
Lexington	5	37	17	32	7	3	305	3.4
Lucas	4	17	32	9	2	7	281	3.1
Mansfield	39	167	79	52	46	40	3243	36.0
Martinsburg	9	9	49	8	2	2	182	2.0
Mason	17	66	55	10	4	4	205	2.3
McConnelsville	7	28	8	17	8	1	509	5.7
Millersburg	4	78	78	34	11	7	367	4.1
Morrow	23	81	106	12	7	3	517	5.7
Mount Gilead	7	39	11	11	4	5	474	5.3
Mount Sterling	5	65	58	32	7	10	354	3.9
Mount Vernon	14	218	205	119	68	29	1505	16.7
New Lyme	0	20	10	0	3	2	76	0.8

* – 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 produce a complete depiction of the information provided by Embarq.

Exchange	9/14*	9/15	9/16	9/17	9/18	9/19	3-Year Total	3-Year Daily Avg
New Paris	6	34	4	2	1	1	191	2.1
Newton Falls	1	15	21	9	7	1	368	4.1
Orrville	8	21	3	3	9	3	276	3.1
Pataskala	4	75	44	28	28	19	1705	18.9
Rittman	4	26	29	4	1	5	124	1.4
Shiloh	0	4	42	8	4	5	93	1.0
Shreve	3	17	26	3	1	2	231	2.6
Sunbury	6	183	22	18	10	12	1293	14.4
Utica-Homer	2	13	8	6	2	2	184	2.0
Warren	21	171	61	119	42	33	3407	37.9
Wayland	0	33	0	1	1	1	58	0.6
Waynesville	7	21	39	16	11	5	299	3.3
Wooster	15	84	55	30	15	21	1054	11.7

* – 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 produce a complete depiction of the information provided by Embarq.

The above table lends support to several arguments made by OCC in its Initial

Comments:

- The Commission should deny Embarq’s “grace period” request for the Holmesville exchange. The number of trouble reports in the exchange for the September 15-17 period (3, 0 and 0, respectively) was near the three-year daily average (0.6). This supports the notion that the spike in trouble reports in the Holmesville exchange on September 18, four days after the windstorm, was not related to the windstorm.
- The Commission should exclude the 12 trouble reports identified in the Cortland exchange on September 19, five days after the windstorm. The number of trouble reports for the Cortland exchange for September 15, 16 and 17 (7, 6 and 8, respectively) was very close to the three-year daily average (6.3). Thus, the increase in trouble reports in the exchange on September 19 does not appear to be storm related.
- The Commission should exclude the 17 trouble reports identified in the Eaton exchange on September 18, four days after the windstorm. The exchange had only seven trouble reports on September 17, just one higher than the three-year daily average. Thus, the increase in trouble reports in the exchange on September 18 does not appear to be storm related.
- The Commission should exclude the 17 trouble reports identified in the Fredericktown exchange on September 19, five days after the windstorm. The six trouble reports in that exchange on

September 18 is not out of line with the three-year daily average (2.7). Thus, the increase in trouble reports in the exchange on September 19 does not appear to be storm related.

- ▶ The Commission should exclude the 12 trouble reports identified in the Hebron exchange on September 18, four days after the windstorm. The five trouble reports in that exchange on September 17 was near the three-year daily average for the exchange (3.4). Thus, the increase in trouble reports in the exchange on September 18 does not appear to be storm related.
- ▶ The Commission should exclude the 17 trouble reports identified in the McConnelsville exchange on September 17, three days after the windstorm. The eight trouble reports in that exchange on September 16 was near the three-year daily average for the exchange (5.7). Thus, the increase in trouble reports in the exchange on September 18 does not appear to be storm related.

In addition, the three-year data not only support OCC's position regarding the Sunbury exchange, the data also show that any "grace period" for that exchange should be limited to a greater extent than OCC had recommended. In its Initial Comments, OCC recommended that the Commission exclude the 12 trouble reports identified in the Sunbury exchange on September 19, five days after the windstorm. The table shows that, in addition to there being only ten trouble reports in that exchange on September 18 – and thus the exchange does not qualify for a "grace period" for September 18 under Rule 8(D)(2) – the number of trouble reports for both September 18 and 19 is less than the three-year daily average for the exchange (14.4). Further, the number of trouble reports in the exchange on September 16 and 17 (22 and 18, respectively) is close to the three-year daily average for the exchange, and thus the number of trouble reports on those days was not out of the ordinary. The Commission should therefore deny Embarq's "grace period" request for the Sunbury exchange for the September 16 through 19 timeframe. At most, Embarq should be allowed a "grace period" only for September 15 in the Sunbury exchange.

Similarly, the three-year data provided by Embarq shows that a “grace period” should be denied or limited to a greater extent than OCC originally recommended in several other exchanges:

- ▶ The three-year daily average in the Greenville exchange (11.5) is not much different from the number of trouble reports in the exchange for September 14, 15 and 16 (11, 23 and 13, respectively),¹⁷ the only three days in which the exchange qualifies for a “grace period” under Rule 8(D)(2).¹⁸ The Commission should deny Embarq’s Application for the Greenville exchange, or at most, grant a “grace period” only for September 15 in the exchange.
- ▶ The three-year daily average in the Lebanon exchange (10.5) is comparable to the number of trouble reports in the exchange for September 17, 18 and 19 (22, 12 and 11, respectively).¹⁹ The Commission should, at most, grant Embarq a “grace period” in the Lebanon exchange for only September 15 and 16.
- ▶ The three-year daily average in the Mansfield exchange (36.0) is close to the number of trouble reports in the exchange for September 17, 18 and 19 (52, 46 and 40, respectively).²⁰ The Commission should, at most, grant Embarq a “grace period” in the Mansfield exchange for only September 15 and 16.
- ▶ There were 29 trouble reports in the Mount Vernon exchange for September 19, which is not far from the three-year daily average (16.7).²¹ The Commission should, at most, grant Embarq a “grace period” in the Mount Vernon exchange for only September 15 through 18.

¹⁷ Although the number of trouble reports in the exchange on September 15 was double the three-year daily average for September in the exchange, it is probably not unusual that for there to be an occasional day with twice the average number of trouble reports in the exchange.

¹⁸ Embarq did not ask for a “grace period” for September 14, but nevertheless provided trouble report data for that day.

¹⁹ Again, although Embarq did not ask for a “grace period” for September 14, the Company nevertheless provided trouble report data for that day. For that reason, and the fact that the number of trouble reports in the exchange for September 14 (29) is not out of line with the three-year daily average for September in the exchange, the Commission should not grant Embarq a “grace period” for September 14.

²⁰ Again, although Embarq did not ask for a “grace period” for September 14, the Company nevertheless provided trouble report data for that day. For that reason, and the fact that the number of trouble reports in the Mansfield exchange for September 14 (39) is close to the three-year daily average for September in the exchange, the Commission should not grant Embarq a “grace period” for September 14.

²¹ Again, although Embarq did not ask for a “grace period” for September 14, the Company nevertheless provided trouble report data for that day. For that reason, and the fact that the number of trouble reports in the Mount Vernon exchange for September 14 (14) is less than the three-year daily average for September in the exchange, the Commission should not grant Embarq a “grace period” for September 14.

- ▶ The three-year daily average in the Pataskala exchange (18.9) is not much different from the number of trouble reports in the exchange for September 17, 18 and 19 (28, 28 and 19, respectively). The Commission should exclude these three days and, at most, grant Embarq a “grace period” in the Pataskala exchange for only September 15 and 16.
- ▶ The three-year daily average in the Warren exchange (37.9) is close to the number of trouble reports in the exchange for September 18 (42) and is more than the number of trouble reports in the exchange for September 19 (33).²² The Commission should exclude these two days and, at most, grant Embarq a “grace period” in the Warren exchange for only September 15 through 17.
- ▶ The three-year daily average in the Wooster exchange (11.7) is not much different from the number of trouble reports in the exchange for September 18 and 19 (15 and 21, respectively).²³ The Commission should exclude these two days and, at most, grant Embarq a “grace period” in the Wooster exchange for only September 15 through 17.

Based on the three-year data, OCC revises its recommendation to the Commission. With the new data in mind, Embarq, at most, should qualify for a “grace period” for the following dates and exchanges:

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

²² Again, although Embarq did not ask for a “grace period” for September 14, the Company nevertheless provided trouble report data for that day. For that reason, and the fact that the number of trouble reports in the Warren exchange for September 14 (21) is less than the three-year daily average for September in the exchange, the Commission should not grant Embarq a “grace period” for September 14.

²³ Again, although Embarq did not ask for a “grace period” for September 14, the Company nevertheless provided trouble report data for that day. For that reason, and the fact that the number of trouble reports in the Wooster exchange for September 14 (15) is close to the three-year daily average for September in the exchange, the Commission should not grant Embarq a “grace period” for September 14.

- September 16: Adamsville, Camden, Glenmont, Martinsburg and Shiloh.

The Commission should deny the request entirely for the Glouster²⁴ and Holmesville exchanges. The Application should also be denied entirely for the Greenville exchange or, at most, be granted for that exchange only for September 15.

IV. CONCLUSION

A “grace period” could have the effect of reducing, or even eliminating, credits under the PUCO’s MTSS for Embarq customers, who had to endure service outages during the September 15-19, 2008 period when they may have especially needed service. To ensure that Embarq’s residential customers who had to endure service outages during the September 15-19 timeframe receive the MTSS credits for which they are entitled, the Commission should limit any grant of a “grace period” for Embarq as OCC recommends herein, in light of the three-year data filed by Embarq on March 24, 2009.

Respectfully submitted,

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²⁴ As OCC noted in its Initial Comments, the Glouster exchange did not have more than ten trouble reports on any day during the period under consideration, and thus, under Rule 8(D)(2), does not qualify for a “grace period.”

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments by the Office of the Ohio Consumers' Counsel was sent electronically to the persons listed below on this 30th day of March 2009.

/s/ Terry L. Etter

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Summary: Comments Comments on Embark's Response to the PUCO Staff's Data Request Regarding Embark's Application to Avoid Paying Credits to Customers 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