

**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)	

**MEMORANDUM CONTRA OF UNITED TELEPHONE COMPANY OF OHIO
D/B/A EMBARQ TO APPLICATION FOR REHEARING BY THE OFFICE OF
THE OHIO CONSUMERS' COUNSEL**

I. Introduction

By Entry dated April 1, 2009 (“Entry”), the Public Utilities Commission of Ohio (“Commission”) granted in part a waiver application filed by United Telephone Company of Ohio d/b/a Embarq (“Embarq”). Embarq’s waiver application sought an additional 48 hour grace period to clear out-of-service trouble reports in certain exchanges based upon the impact of Hurricane Ike and Governor Strickland’s declaration of emergency. The Office of the Ohio Consumers’ Counsel (“OCC”) has filed for rehearing. The OCC claims that the Commission erred in granting Embarq a grace period for four exchanges on days following the hurricane damage. But, because the Commission ruled correctly, OCC’s application should be denied.¹

II. Argument

A. Embarq is entitled to a grace period for the Chesterville exchange on September 15, 2008.

¹ Embarq agrees with OCC that, under the Commission’s interpretation of the applicable rule, the Kidron exchange is not eligible for a grace period on September 16, 2008.

Rule 4901:1-5-08(D), O.A.C. (“Grace Period Rule”) governs Embargo’s waiver application. The rule provides, in pertinent part:

(D) LECs may be permitted by the commission to obtain a grace period of an additional forty-eight hours in each exchange where otherwise a customer adjustment would accrue pursuant to paragraph (C) of this rule, due to an extreme, unique, or unforeseeable weather-related incident.

(1) A grace period may be requested by a LEC per affected exchange by filing a request for a waiver of paragraph (C) of this rule within ten business days of the weather-related incident. A grace period may be requested due to **either**:

(a) At least a three hundred per cent 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.

(b) Any declaration of a state of emergency by the governor or a duly authorized county official for the county in which the exchange is located.²

The grace period rule is written in the alternative. A grace period is available when **either** of two conditions exists. First, if there is 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 during the three previous years, a grace period is permitted. Second, a grace period is available if the governor or a duly authorized county official has declared a state of emergency for the county in which the exchange was located. Because the rule uses the word “either,” the company filing for a waiver must show that it has met just one of those conditions, not both.

The Chesterville exchange meets the requirements for a grace period for September 15, 2008 because Governor Strickland had declared a state of emergency and because there were more than 10 out-of-service trouble reports on that day. Because the

² O.A.C. Rule 4901:1-5-08(D) [Emphasis supplied].

state of emergency existed, and because there were more than 10 out-of-service trouble reports, Embarq was not required to show that Chesterville had a 300% increase in trouble reports over the three year average for September. Therefore, although the Commission may have granted the grace period for Chesterville using other criteria, the fact remains that Chesterville was eligible for the grace period because it met the criterion of Rule 4901:1-5-08(D)(1)(b) [declaration of state of emergency] and had more than 10 daily out-of-service reports on September 15, 2008. Because the state of emergency existed, it is irrelevant that Chesterville did not have a 300% increase in trouble reports over the average for the prior three years.

B. Embarq is entitled to a grace period for the Fredericktown and Holmesville exchanges on September 19 and September 18, 2008, respectively.

OCC argues that Embarq should not be granted a grace period for Fredericktown and Holmesville for one day each because, so OCC claims, the trouble reports “. . . do not appear to be related to an extreme, unique, or unforeseeable weather-related incident...”³ OCC’s position is untenable because the only logical inference is that Fredericktown’s trouble reports on September 19 and Holmesville’s trouble reports on September 18 were caused by the hurricane.

For the three days immediately following the storm, Fredericktown averaged approximately 57 trouble reports per day. On September 18, the number of trouble reports dropped to 6. But on the next day the number of trouble reports soared to 17. For the three previous Septembers, Fredericktown averaged 2.7 out-of-service trouble reports per day. Therefore, to meet the 300% increase in trouble reports required by the Grace Period rule, Fredericktown would need to experience approximately 11 out-of-service

³ OCC Application for Rehearing, Memorandum in Support at 5.

trouble reports on a particular day. But Fredericktown had 17 out-of-service trouble reports on September 19, almost a **600% increase** in a number of trouble reports. By far the most logical inference is that this exceptional number of trouble reports was related to the hurricane and its aftermath.

OCC claims that “The spike in trouble reports on September 19 . . . obviously was not related to the September 14 weather-related incident.”⁴ OCC provides nothing to support this conclusionary allegation, and OCC’s claim is contrary to common sense. When there is a nearly a 600% increase in the number of daily trouble reports, five days after a storm that resulted in Ohio’s governor declaring a state of emergency for the entire state, the most reasonable inference is that the trouble reports were caused by the hurricane. Accordingly, the Commission properly granted Embarq a grace period for the Fredericktown exchange on September 19, 2008.

The same reasoning applies to the Holmesville exchange and its astronomical number of trouble reports on September 18, 2008. Embarq does not know why Holmesville had so few trouble reports in the 3 days immediately following the storm. Perhaps conditions were so bad that people did not report trouble with their phones because they could not or because they had more important issues to attend to. But, because 2.3 trouble reports per day would have constituted a 300% increase over the average for the previous three Septembers, it is only reasonable to conclude that 47 trouble reports (four days after the storm) were the result of the storm. Those 47 trouble reports constitute approximately a **6,000% increase** over the daily average for the previous three Septembers. Thus, here again, the only logical inference is that the trouble reports on September 18 resulted from the storm.

⁴ Id at 6.

III. Conclusion

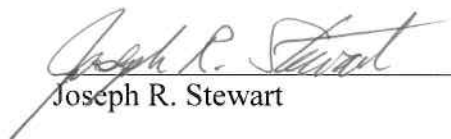
The Commission correctly granted Embarq a grace period for the Chesterville, Fredericktown, and Holmesville exchanges on the days in question. Accordingly, except for the Kidron exchange for September 16, 2008, the OCC's Application for Rehearing should be denied.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Memorandum Contra was served via first class mail, postage prepaid this 11th day of May, 2009 to the persons listed below.



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Summary: Memorandum Contra of United Telephone Company of Ohio dba Embarq to OCC's Application for Rehearing electronically filed by Sonya I Summers on behalf of United Telephone Company of Ohio d/b/a Embarq