

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 an Out-of-Service Grace Period Under the)
Minimum Telephone Service Standards.)

ENTRY

The Commission finds:

- (1) On April 11, 2009, the Commission issued an entry in this case by which it granted in part and denied in part a request for grace period filed by the applicant, United Telephone Company of Ohio d/b/a Embarq (Embarq). Rule 4901:1-5-08(D) Ohio Administrative Code (O.A.C.), states in essence that, under certain circumstances as covered by the rule, local exchange carriers may, due to an extreme, unique, or unforeseeable weather-related incident, be permitted by the Commission to obtain a grace period of an additional 48 hours in each exchange where otherwise a customer adjustment would accrue pursuant to paragraph (C) of the same rule. Embarq's grace period application in this case, filed on September 24, 2008, pertained to out-of-service issues that arose when, on Sunday, September 14, 2008, the remnants of Hurricane Ike hit the state of Ohio as a massive windstorm. Governor Strickland issued a declaration of emergency for the entire state of Ohio on September 15, 2008.
- (2) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing an application within 30 days after the entry of the order upon the journal of the Commission. Under Rule 4901-1-35(B), O.A.C., any party may file a memorandum contra within ten days after the filing of an application for rehearing.
- (3) On May 1, 2009, the office of the Ohio Consumers' Counsel (OCC), as a party to this case whose motion for intervention was granted by entry issued November 6, 2008, filed an application for rehearing of the Commission's April 11, 2009, entry, along with an accompanying memorandum in support thereof. In response, Embarq filed a memorandum contra OCC's rehearing application on May 11, 2009.

- (4) In its application for rehearing, OCC argues that the Commission's April 11, 2009, entry is unreasonable and unlawful for the following three reasons:

- (a) The Commission erred by granting a grace period for the Kidron Exchange on September 16, 2008. OCC states that there were only 6 trouble reports for the Kidron Exchange on that day and, as such, too few to warrant a grant of a grace period under the requirements of Rule 4901:1-5-08(D)(2), O.A.C., [Rule 8(D)(2)].
- (b) The Commission erred by granting a grace period for the Fredericktown Exchange on September 18, 2008, and for the Holmesville Exchange on September 19, 2008, because, according to OCC, Embarq failed to show how the trouble reports in those exchanges on those days were related to the September 14, 2008, windstorm and, consequently, failed to meet its burden of showing that a grace period was warranted in those exchanges on those days.

OCC contends that neither the 47 trouble reports in the Holmesville Exchange on September 19, 2008, nor the 17 trouble reports in the Fredericktown Exchange on September 18, 2008, appear to be related to the windstorm that occurred on September 14, 2008. According to OCC, Embarq provided nothing to show that the trouble reports on the days in question in the Fredericktown and Holmesville exchanges "were caused by any weather condition."

- (c) The Commission erred by granting for the Chesterville Exchange on September 15, 2008, a grace period that was unwarranted under Rule 8(D)(1)(a), because that exchange, according to OCC, did not experience a 300 percent increase in trouble reports as required under that rule provision.
- (5) In its memorandum contra, Embarq takes the position that it is entitled to a grace period for the Chesterville Exchange on September 15, 2008, for the Holmesville Exchange on September 18, 2008, and for the Fredericktown Exchange on September 19, 2008.

- (6) Upon review of all relevant pleadings of record, the Commission finds OCC's rehearing application should be granted in part and denied in part. We find merit in OCC's first argument, namely, that there were only six trouble reports in the Kidron Exchange on September 16, 2008, and, as such, too few under Rule 8(D)(2) to warrant a grant of a grace period for that exchange on that day. OCC's rehearing application has brought to our attention that it was only through an inadvertent error that we unintentionally included the date of September 16, 2008, as among the dates to which a grace period should have applied with regard to the Kidron Exchange. Consequently, upon rehearing, we find both that no grace period should have been granted for September 16, 2008, with regard to the Kidron Exchange and that our April 11, 2009, entry should now be considered as amended on rehearing so as to reflect this finding.
- (7) We find no merit in OCC's second argument, namely, that Embark needed to do more than it did in order to make a sufficient showing that the trouble reports that occurred in the Holmesville Exchange on September 18, 2008, and in the Fredericktown Exchange on September 19, 2008, were related or are attributable to the September 14, 2008, windstorm. Even OCC admits that the number of trouble reports that the Fredericktown Exchange experienced each day during the period from September 15 through September 17, 2008, were sufficient to warrant the grant of a grace period covering those successive days. We do not agree with the position espoused by OCC, that the occurrence of fewer, and of a below-the-threshold number of Fredericktown trouble reports on September 18, 2008, creates a reason to assume that any or all trouble reports that occurred thereafter, and specifically the 17 trouble reports that occurred just one day later, i.e., on September 19, 2008, were, as OCC claims "obviously not" storm-related. Likewise, we do not find it unreasonable or unlawful, under the circumstances of record, to attribute to the storm and its aftermath, the significant aberration from normal trouble report numbers which the data of record shows the Holmesville Exchange to have experienced on September 18, 2008, i.e., within four days after the occurrence of the windstorm on September 14, 2008.
- (8) Finally, we find merit in OCC's third argument. Upon checking our math, the Commission finds that OCC is correct in stating that the Chesterville Exchange should not have been included in the list of exchanges that were granted a grace period. Consequently,

upon rehearing, we find that no grace period should have been granted for the Chesterville Exchange and that our April 11, 2009, entry should be considered as amended on rehearing so as to reflect this finding.

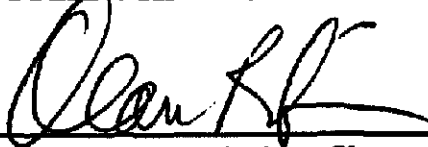
It is, therefore,

ORDERED, That, in accordance with the above findings, OCC's application for rehearing is granted in part, such that the Commission's April 11, 2009, entry shall be considered as amended on rehearing in the manner described in Findings (6) and (8) above but, in all other respects, rehearing is denied and the April 11, 2009, entry, as originally issued, is affirmed. It is, further,

ORDERED, That all rehearing arguments not specifically addressed in this rehearing entry are denied. It is, further,

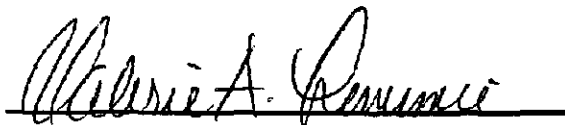
ORDERED, That a copy of this entry on rehearing be served upon the parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

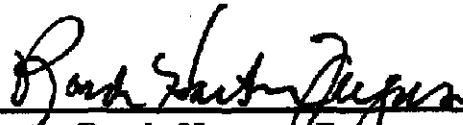


Alan R. Schriber, Chairman

Paul A. Centolella



Valerie A. Lemmie



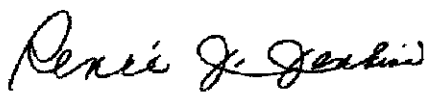
Ronda Hartman Fergus



Cheryl L. Roberto

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Renee J. Jenkins
Secretary