

FILE
PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of the)
Minimum Telephone Service Standards As) Case No. 00-1265-TP-ORD
Set Forth in Chapter 4901:1-5 of the Ohio)
Administrative Code.)

In the Matter of the Commission's Review)
of Chapters 4901:1-17 (Establishment) Case No. 03-888-AU-ORD
of Credit for Residential Utility Services))
and 4901:1-18 (Disconnection of Natural)
Gas or Electric Service to Residential)
Customers) of the Ohio Administrative)
Code.)

In the Matter of the Commission Ordered)
Investigation into the Forwarding of the) Case No. 93-540-TP-COI
Calling Party's Number Via SS7 or Other)
Future Signaling Technologies.)

In the Matter of the Commission's)
Investigation into the Detariffing of the) Case No. 86-927-TP-COI
Installation and Maintenance of Simple and)
Complex Inside Wire.)

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MEMORANDUM CONTRA EMBARQ'S APPLICATION FOR WAIVERS OF
VARIOUS DISCLOSURE REQUIREMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
THE APPALACHIAN PEOPLE'S ACTION COALITION,
AND
BOARD OF COUNTY COMMISSIONERS, LUCAS COUNTY, OHIO

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") (on behalf of the residential telephone customers in the State of Ohio), the Appalachian People's Action Coalition and the Board of County Commissioners, Lucas County, Ohio submit this memorandum

contra the Application for Waiver filed by Embarq¹ on June 20, 2007.² The interests of more than 335,000 Embarq residential customers in Ohio could be adversely affected by the outcome of Embarq's Application to be excused from requirements to disclose certain information to its customers.³

During the years 2002 through 2005, the staff of the Public Utilities Commission of Ohio ("PUCO" or "Commission") conducted audits of Embarq's call centers. The audits led staff to the conclusion that "in certain instances, Embarq had not fully complied with the MTSS."⁴ As a result of these audits, Embarq developed a Unilateral Action Plan ("Plan") "in order to resolve outstanding issues regarding compliance with the MTSS for calendar years 2002 through 2005...."⁵

In order to measure its compliance, Embarq developed a series of benchmarks that it had to meet in order to avoid paying forfeitures. The benchmarks involved making certain disclosures required by the Commission, among them:

- the estimated initial bill;
- offering to spread installation charges over three months;
- informing customers of the amount to avoid disconnection;

¹ Embarq is a d/b/a of United Telephone Company of Ohio.

² The Minimum Telephone Service Standards ("MTSS") do not provide a process for responding to waiver requests. Waiver provisions in other rules, however, specify that waiver requests are processed according to Ohio Adm. Code 4901-1-12. See, e.g., Ohio Adm. Code 4901:1-6-06(B). Thus, this Memorandum Contra is being filed according to Ohio Adm. Code 4901-1-12(B).

³ See Embarq's 2006 Annual Report filed with the Commission, Schedule 28.

⁴ *In the Matter of a Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio and United Telephone Company of Ohio dba Embarq Relating to the Minimum Telephone Service Standards*, Case No. 06-1354-TP-UNC, Stipulation (November 16, 2006) ("Stipulation") at 1. The Commission approved the Stipulation by Finding and Order on December 13, 2006 ("06-1354 Order").

⁵ Stipulation at 1. The Plan was attached to the filed Stipulation.

- informing customers of their inside wiring rights;
- explaining to customers the services in a package and the availability of services on a stand-alone basis;
- resolving customers' issues before marketing to them;
- informing customers of the most economical service to meet their stated needs; and
- informing customers of blocking options.⁶

The Plan also stated that the “[r]equired payment of a forfeiture for any of categories above will result in evidence of the continuation of the violations in that category.”⁷

Embarq signed the Plan on June 9, 2006.⁸ Because Embarq failed to meet some of the benchmarks that Embarq itself had developed, the Commission ordered Embarq to pay a \$200,000 forfeiture on December 15, 2006.

Not ironically, by its Application Embarq now seeks to be excused from complying with the same disclosure requirements that were the subject of the Stipulation. Embarq also seeks relief from an alleged interpretation by Commission staff that, Embarq asserts, requires Embarq’s customer service representatives to state the amount needed to avoid disconnection when customers call to make payment arrangements or to pay their bill.⁹ In addition, Embarq wishes to deny customers the right to cancel inside wire maintenance service within ten days of the postmark date on the terms and conditions brochure, as set forth in Case No. 86-927-TP-COI.¹⁰

⁶ See *id.*, Plan at 2-3.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ Application at 6.

¹⁰ *Id.* at 8.

As discussed herein, Embarq has failed to show good cause for the waivers, as required by the Commission's rules. Embarq's argument that the waivers are needed in order to "achieve greater regulatory parity" between Embarq and some other telecommunications providers¹¹ is not a reason to diminish the consumer protections accorded Embarq's customers. Rather, there is a real need for the Commission to extend consumer protections comparable to those found in the MTSS to users of other telecommunications services.¹² In addition, Embarq has failed to show that the rules in question are "unduly burdensome, unnecessary, and outdated,"¹³ or that the alleged but unquantified "considerable expense" of compliance¹⁴ causes an unreasonable hardship on Embarq, which had a **41.6%** return on equity in 2006.¹⁵ Thus, the Commission should deny the Application.

II. STANDARD OF REVIEW

MTSS waivers may be granted for "good cause shown" or if it can be shown that complying with a provision would impose an unreasonable hardship on the company or its customers.¹⁶ Except for the requirement that a hardship waiver be accompanied by a memorandum in support, the MTSS do not specify the form of either type of waiver

¹¹ Application at 1.

¹² See *In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 05-1102-TP-ORD, Consumer Groups Comments (September 8, 2006) at 5-12.

¹³ Application at 1.

¹⁴ Id.

¹⁵ Calculated using the 2006 Annual Report to the PUCO of United Telephone Company of Ohio, d/b/a Embarq.

¹⁶ Ohio Adm. Code 4901:1-5-02(B)(1); Ohio Adm. Code 4901:1-5-02(D).

request. In addition, the Commission may grant a waiver of the establishment of credit rules in Ohio Adm. Code Chapter 4901:1-17 for good cause shown.

Ohio Adm. Code 4901:1-17-09 contains specific requirements for an application for waiver of those rules:

The application for a waiver shall include the specific rule(s) requested to be waived. If the request is to waive only a part or parts of a rule, then the application should identify the appropriate paragraphs, sections, or subsections to be waived. The waiver request shall provide sufficient explanation by rule, including advantages and possible disadvantages, to allow the commission to thoroughly evaluate the waiver request.

The Commission has not clearly delineated requirements for either the good cause standard or the hardship standard.

The Commission has, however, noted the importance of maintaining the integrity of the MTSS: “The Commission has already determined that these standards are essential to providing Ohio consumers a minimal level of service, and, as a general matter, the Commission is not inclined to grant waiver requests that would have the effect of abrogating the essential minimum level of telephone service available to Ohio consumers.”¹⁷ Thus, the key consideration in examining a waiver request should be the effect of the waiver on “the essential minimum level of service” to the requesting company’s customers.¹⁸

In addition, in adopting the “unreasonable hardship” standard, the Commission required telephone companies to show an inability to comply with a rule:

¹⁷ *In the Matter of the Application of NOW Communications, Inc. to Offer Resold Local Exchange and Intrastate Interexchange Services*, Case No. 98-1466-TP-ACE, *et al*, Opinion and Order (November 2, 2000) at 58.

¹⁸ The PUCO should also require a detailed justification for the waiver, as is required in the Retail Service Rules. See Ohio Adm. Code 4901:1-6-06(B).

[T]he waiver provision is available for those local exchange companies (LECs) which find that they **are not able** to meet the requirements of a particular rule(s). Requests for waivers will be considered on a case-by-case basis and will be judged on whether or not compliance with the rule(s) in question **actually** presents a hardship for the requesting LEC. While the Commission understands that, especially for many smaller companies, waivers of certain rules may be necessary, we would at this time warn all LECs not to abuse this provision. In the final comments submitted in this docket, a few LECs threatened to file waivers for a number of the proposed standards if enacted. The Commission would caution these and all other LECs to file for waivers only in those instances where actual hardship in implementing these rules exist, and not in those situations where the company simply disagrees with a rule or does not wish to change its policies or equipment to meet the minimum standards.¹⁹

A showing of “actual” hardship should be supported by documentation, rather than by mere bald assertions.²⁰

III. ARGUMENT

The Commission should deny the Application. At the outset, it must be noted that Embarg cites Ohio Adm. Code 4901:1-4-01(E) as the basis for its Application.²¹ That rule, however, is not a waiver provision for the standards discussed in the Application, or for any Commission regulation. Instead, Ohio Adm. Code 4901:1-4-01(E) contains only a definition of “competitive local exchange carrier” as used in the Commission’s

¹⁹ *In the Matter of the Revision of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 83-869-TP-COI, Finding and Order (October 18, 1988), 1988 Ohio PUC LEXIS 978, *3 (emphasis added).

²⁰ Apparently, the PUCO has not addressed the “unreasonable hardship” standard in the MTSS. However, the PUCO has consistently required companies seeking anything other than de minimis (e.g., delays in directory publication dates) MTSS waivers to document the alleged hardship on the company. See, e.g., Case No. 00-1265-TP-ORD, Entry (January 9, 2005) at 4-5 (discussing need for documentation of “act of God” waiver requests and that Verizon had failed to provide sufficient documentation for one exchange).

²¹ Application at 1.

alternative regulation rules. Thus, Embarq has failed to provide a legal basis for its Application.

In any event, Embarq has failed to make the showings required by the Commission's MTSS and establishment of service waiver provisions that are discussed in Section II above. Embarq does not even assert that it has shown "good cause" for the waivers; the phrase "good cause" does not even appear in the Application, nor does the Application cite to the "good cause" waiver rules discussed above in Section II.

In addition, the Application does not claim that the waivers are necessary to avoid an unreasonable hardship on either Embarq or its customers. The closest that Embarq comes to making such an assertion is its complaint that "MTSS compliance places regulated incumbent providers such as Embarq at tremendous competitive disadvantage..."²² This criticism of the MTSS, however, is not specific to Embarq, and thus should have been addressed in the MTSS rulemaking.

As discussed below, granting the Application would result in an abrogation of the essential minimum level of telephone service that the PUCO expects Embarq and other companies to make available to their customers. All incumbent local exchange carriers ("ILECs") in Ohio still dominate their markets. Although company-specific data is not available, the Federal Communications Commission reports that, as of June 30, 2006, ILECs still control approximately 85% of switched access lines in Ohio,²³ a percentage that has remained constant for at least two years.²⁴ And although Ohio-specific

²² Id. at 2.

²³ See "Local Competition: Status as of June 30, 2006," FCC Wireline Competition Bureau (January 2007) at Table 7 (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270133A1.pdf).

²⁴ See id. at Table 8.

information is not available, Embarq's company-wide access line losses have decreased for the past two fiscal quarters, with Embarq's increases in digital subscriber line (87,000) and wireless (23,000) more than offsetting its access line losses (77,000) during the first quarter of 2007.²⁵ Thus, it appears that much of the "competition" facing Embarq, the ILEC, is from its own parent company.

It is therefore necessary for customer protection that the PUCO require that Embarq, given its past problems of compliance with most of the rules covered by the Application,²⁶ to continue to make the disclosures that are the subject of the waiver requests. Of course, if a customer asks an Embarq representative not to continue reading a disclosure, the representative should be allowed to proceed to another topic on that call. It should be stressed, however, that the representative must not be allowed to ask the customer whether the customer desires to hear the disclosures. Such prompting was at the root of many of the MTSS marketing violations found in the Ameritech Service Quality Order.²⁷ Rather, the customer should initiate any request to dispense with the reading of a disclosure.

A. Granting the Waivers Would Abrogate the Essential Minimum Level of Telephone Service to Embarq's Ohio Customers.

The disclosure requirements that are the subject of the Application have become an integral part of the Commission's consumer protections. The thrust of Embarq's

²⁵ See Embarq Investment Community Update First Quarter 2007 (April 25, 2007), available at http://library.corporate-ir.net/library/19/197/197829/items/241882/EQ_1Q07presentation.pdf, at [4-5].

²⁶ The Commission has recognized that the Stipulation may be referenced as a part of Embarq's history of violations. See 06-1354 Order at 2.

²⁷ *In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code*, Case No. 99-938-TP-COI, Finding and Order (July 20, 2000).

argument for the waivers is that companies that provide other types of telephone service (i.e., wireless, cable, Voice over Internet Protocol²⁸) are not subject to the same disclosure requirements. Embarq, however, has not remotely shown that the requirements should be eliminated.

The Commission has determined that competition itself should not be the primary determinant of the breadth of information that consumers should receive from telecommunications providers. Rather, as more types and packages of services become available, consumers need **more** information -- not less -- from telecommunications providers in order to make informed choices. The disclosure requirements at issue are essential to protecting consumers from dubious marketing tactics.

Many of the marketing disclosures at issue here were adopted as a direct result of marketing abuses discovered in the Ameritech Service Quality proceeding. The abuses were not limited to Ameritech (now AT&T). As OCC noted in the 2000 MTSS proceeding, Sprint (now Embarq) practiced similar customer abuses:

One OCC employee who is a Sprint/United subscriber called Sprint's repair number on August 28, 2000 to report a service outage. While the Sprint repair service rep was getting the subscriber's information on her computer, she made separate sales pitches for a telephone and Sprint long distance service. After the second sales pitch, the subscriber expressed his displeasure at being subjected to sales pitches while waiting to find out when a repair commitment could be made. The repair service rep responded that she "was just doing her job."²⁹

²⁸ Embarq also mentions broadband over power line service. If the service exists at all in Embarq's territory, however, it would be such a nascent service that Embarq could hardly be at a "tremendous competitive disadvantage" (Application at 2) because of it.

²⁹ 00-1265, OCC Comments (August 31, 2000) at 52.

The disclosure requirements for which Embarq seeks a waiver help ensure that Ohio's telephone consumers receive the services and information they need without being subjected to high pressure sales tactics that can develop even in a competitive environment, or especially in a competitive environment, given the pressures inherent in meeting competition.

Although the Commission recognized in the most recent MTSS order that some discussion of products and services may be helpful during repair calls, the Commission's acknowledgement was not as expansive as Embarq represents.³⁰ Embarq quotes only a small portion of the Commission's discussion of marketing during repair calls. The rest of the paragraph shows how narrow the Commission's acknowledgement was:

We find that the rule needs no modification, but rather is worded in a way that sufficiently leaves open, **under very narrow circumstances as described in this opinion and order**, the ability of the provider, in the course of responding to a trouble report call, to discuss during the call (**without actually attempting to sell during the discussion of how the customer's concern might be resolved**) any of its available services or products that might prove helpful in resolving the specific concerns raised by the customer during the call. How finely to draw the line may be a matter for case-by-case determination, but **in our view, it is one thing to discuss the availability and terms of a service or product which might help resolve a trouble report issue already under discussion, and quite another to act in a way that might directly engage the customer in actually subscribing to, or otherwise procuring, such a service or product.**³¹

The Commission's view on marketing to customers during repair calls is not as broad as Embarq maintains.

³⁰ Application at 4-5.

³¹ 05-1102, Opinion and Order (February 7, 2007) at 31 (emphasis added).

Granting the requested waivers would abrogate the essential minimum level of service for Embarq's customers. The Commission should deny the Application.

B. Embarq Has Failed to Show Good Cause for the Requested Waivers.

Embarq claims that the oral disclosure requirements are “unduly burdensome, unnecessary, and outdated...”³² Embarq, however, does not quantify any of the burdens or costs that it supposedly incurs as a result of disclosure requirements. Such quantification should have been submitted with the Application; if Embarq provides such information with its response to this memorandum contra or through a supplemental filing, the Commission should ignore the information or set the Application for hearing so that the validity of the information may be examined.

For all but one of Embarq's waiver requests,³³ Embarq's arguments fit into three categories: (1) other telecommunications providers are not required to make the disclosures³⁴; (2) the disclosures lengthen customer service calls³⁵; and (3) customers are already familiar with the information to be disclosed.³⁶ These arguments fail to show good cause.

First, it is irrelevant that other telecommunications providers need not make disclosures that Embarq must. As the Commission recently noted, “we are statutorily authorized to adopt reasonable standards of telephone service that will ensure that,

³² Application at 1.

³³ The waiver concerning Ohio Adm. Code 4901:1-5-17(K)(4), which will be discussed later in this section.

³⁴ See *id.* at 3 (deferred installation charges), 4 (listing services in a package) and 5-6 (offering a guarantor in lieu of a deposit).

³⁵ See *id.* at 4 (listing services in a package) and 5 (offering a guarantor in lieu of a deposit).

³⁶ See *id.* at 4 (listing services in a package), 7 (privacy features) and 8 (inside wiring).

regardless of market conditions, both residential and business consumers will be furnished adequate telephone service.”³⁷

The Commission has long noted the need for consumers to be informed – even in a competitive environment: “Competition is driven by an incentive to increase profit while capturing market share, a goal which may, but need not necessarily, coincide with that of fully disclosing to customers information concerning their most economical available options.”³⁸

And as noted above, ILECs are still the dominant carriers in their service territories. The Commission has thus placed a special responsibility upon ILECs:

As more options become available to customers, the need to inform customers accurately of their rights and responsibilities becomes more important, not less important. Although this responsibility should be borne by all providers, it is especially appropriate for the incumbent provider, which retains overwhelming market share and monopoly control over certain portions of the customer’s telephone service.³⁹

Thus, the public does benefit from disclosure requirements, even in a competitive environment.

Second, Embarq does not show that any additional expense or call-handling time caused by the disclosures outweighs the informational benefit that customers receive from the disclosures. Embarq provides no data regarding the length of time that the disclosures allegedly add to customer’s calls or the expense that Embarq incurs due to the disclosures. In any event, before accepting Embarq’s assertion as fact, the Commission

³⁷ 05-1102, Opinion and Order at 5.

³⁸ 00-1265, Opinion and Order (May 29, 2001) (“2001 MTSS Order”) at 60.

³⁹ Case No. 86-927-TP-COI, Entry (March 29, 1995) (“Inside Wire Entry”) at 9.

should audit Embarq's customer service process to determine how much additional time per call is spent in the company's efforts to sell customers services that they might not want or need.⁴⁰

Third, Embarq's assumptions regarding customers' familiarity with inside wire maintenance programs, the network interface device ("NID") and the components of bundled services are unsupported and overly broad. Even if Embarq has provided extensive information through the years regarding these subjects,⁴¹ there are consumers who are new to the area, or who are getting their first phone, or who have not had to deal with these matters before. Embarq's assumptions falter under even cursory examination.

Inside Wire

Embarq states that consumers should be familiar with its inside wire plan because they have had "extensive experience" with telephone and cable inside wire agreements and wireless maintenance agreements.⁴² Even if consumers have had such an agreement with another provider, as Embarq suggests,⁴³ inside wiring policies vary widely from provider to provider, and may be vastly different from Embarq's. The inside wire portion of Time Warner's service agreement in Ohio, for example, bears little resemblance to Embarq's inside wire plan. Time Warner's plan states:⁴⁴

⁴⁰ See Ameritech Service Quality Order at 38. See also Case No. 98-938, Final Report on the Audit of Ameritech-Ohio's Service Recording and Reporting, Liberty Consulting Group (September 20, 2001) at III-37 and 38.

⁴¹ See Application at 8.

⁴² Id. at 8.

⁴³ Id.

⁴⁴ The Time Warner service agreement alludes to a service protection plan that apparently is available in limited areas. See http://help.twcable.com/html/twc_sub_agreement2.html, section 7(b). None of the Time Warner websites serving Ohio reference such a plan.

If you choose to have us remove, replace, rearrange or maintain the wiring inside your home, you will be charged our regulated hourly service charge on a per-visit basis.

Furthermore, we are not responsible for problems relating to the operation of customer-owned consumer electronic equipment such as televisions, VCRs, home antennas, etc., which may be connected to the inside wiring in your home. We are, however, responsible for problems relating to any equipment that you lease from us, other than problems caused by tampering, neglect or abuse.

You also have the option of removing, repairing, rearranging or maintaining the inside wiring yourself or hiring a contractor to do the work for you. It is important that high quality home wiring materials be used and that these materials be properly installed in order to avoid signal leakage and to maintain signal quality in compliance with FCC technical regulations. However, **if improper materials or installation causes signal degradation and/or leakage, we may be required under federal law to terminate your cable service until the problem can be remedied.**⁴⁵

Thus, Time Warner customers pay a single hourly rate for each visit, no matter what the problem is, and may face service disconnection if they hire an independent contractor who uses substandard materials. In addition, the only apparent limitation on Time Warner's policy, other than wiring not installed by Time Warner, is on customer-owned equipment.

On the other hand, Embarq's inside wire plan has a monthly rate per line that covers, with some exceptions, multiple visits for problems caused by:

- standard wear and tear, deterioration by the elements, and animal damage;
- re-activation/reconfiguration of existing already terminated inside wire and jacks in good working condition;

⁴⁵ See <http://www.timewarnercable.com/northeastohio/customer/servicepolicies.html>;
<http://www.timewarnercable.com/dayton/customer/servicepolicies.html>;
<http://www.timewarnercable.com/cincinnati/customer/servicepolicies.html> (all emphasis added).

- third party damage, such as impairment caused during the installation of a burglar alarm or satellite dish; and
- damage to wiring caused by lightning strikes.⁴⁶

In addition, Embarq's inside wire plan contains many exclusions and limitations not found in Time Warner's policy:

- The connection of non-terminated NID wires (wires hanging loose at the NID or house protector) and the relocation or installation of jacks and interior wiring.
- The replacement of voice-grade interior wire with interior wire for high-speed data applications.
- The replacement of voice jacks with jacks used for high-speed data or other applications. Existing inside wire jacks will only be replaced with comparable jacks. Where combination voice/data/video jacks exist (commonly referred to as multi-use jacks), and the voice or data portion of the jack is determined to be faulty, Embarq technicians will place a new voice and/or data jack adjacent to the existing multi-use jack and leave the existing multi-use jack in place.
- Service in recreational vehicles, such as travel trailers, campers, boats, and other temporarily located vehicles.
- Maintenance of inside wiring when environmental factors at the location present a threat to the health and safety of the repair personnel.
- Maintenance of wiring not installed according to Embarq technical standards or installation guidelines.
- Repair of existing problems known but not reported at the time customer subscribes to LineGuard.
- If within a 90 day period, the customer makes two reports of access line trouble and Embarq in both instances isolates the trouble to the same problem associated with any customer premises equipment owned or leased by the customer (telephones, alarm systems, modems, etc.), Embarq will assess an isolation

⁴⁶ See "A Guide to Embarq Lineguard" ("Lineguard Guide") (Attachment A to this Memorandum) at 2.

charge for any subsequent service calls the customer makes that are isolated to the same problem.⁴⁷

Thus, Embarq's inside wire plan bears little resemblance to Time Warner's inside wire policy.

In addition, a provider's inside wire plans may vary widely from region to region. For example, Time Warner has a Service Protection Plan in San Diego that includes maintenance of inside coaxial cable and telephone wiring from the NID to the cable box.⁴⁸ But in El Paso, Texas, the plan apparently includes only free repair of existing telephone wiring and replacement of cable drops.⁴⁹

Further, if customers living in rental units or condominiums are not informed about their rights at the time of ordering, they may needlessly order an inside wire maintenance plan. As Embarq's inside wire brochure states, "Customers in apartments, condos and other multiunit housing should consult with their residential management or landlord **prior to ordering** LineGuard to determine if Embarq technicians are permitted to repair inside wire or jacks in the customer's dwelling."⁵⁰ It does a customer no good to receive this important information after signing up for an inside wire plan – especially if the ten-day buyer's remorse period is eliminated, as Embarq requests.⁵¹

⁴⁷ Id. at 2-3.

⁴⁸ See <http://www.timewarnercable.com/sandiego/spp/spp.html>.

⁴⁹ See <http://www.timewarnercable.com/elpaso/customer/spp/serviceprotectionplan.html>.

⁵⁰ Lineguard Guide at 3 (emphasis added).

⁵¹ Application at 8.

Network Interface Device

Likewise, Embarq states that the requirement to explain the consequences for the customer of not checking service at the NID “is simply outdated and an unnecessary expense imposed on regulated telecommunications providers.”⁵² Once again, no support is given for this statement. Contrary to Embarq’s view, the reality is that many, if not most, consumers do not know where to find their NID or how to test it.

Ameritech (now, AT&T) made arguments similar to Embarq’s 13 years ago in the Inside Wire proceeding.⁵³ The Commission’s rejection of those arguments is just as valid today:

Ameritech has failed to establish any significant burden which a LEC will incur by providing an inquiring subscriber with an explanation of his/her responsibilities concerning utilizing a NID for diagnostic testing to determine the location of the service difficulty. The subscriber should be informed of the likely location of the NID, as well as any potential applicable charges, in the event that a NID is present and the subscriber refuses to perform the diagnostic tests. The LEC must also explain that, regardless of the location of the eventual service difficulty, no charges will be assessed if a NID not is [sic] present and has not previously been declined by the subscriber. The Commission believes that the educational value of these requirements far outweigh any inconvenience which may be incurred by the LECs in providing this necessary information.⁵⁴

The Commission should reassert this view and deny Embarq’s waiver request.

Components of Packages

In addition to competitive parity, Embarq also argues that it should be granted a waiver of Ohio Adm. Code 4901:1-5-07(D) because “customers are well acquainted with

⁵² Id.

⁵³ See Inside Wire Entry at 8-9.

⁵⁴ Id. at 9.

service packages and in fact may be ordering in response to a company promotion for a specific package.”⁵⁵ Embarq would have customers rely on the welcome packet to inform customers of the services contained in packages.⁵⁶

Embarq again assumes too much. Although some customers may be familiar with Embarq’s packages, those customers who are new to Embarq’s service territory or who may be buying a package for the first time likely are not. In order to avoid customers buying services they neither want nor need, customers should be told about the services in a package when they call Embarq to arrange service, not days later.

Embarq has failed to show good cause for the waivers. The Commission should deny the waiver requests.

C. Embarq Has Failed to Show That Complying with the Rules Would Impose an Unreasonable Hardship on Embarq or Its Customers.

Embarq makes no effort to show that complying with the rules in question would impose an unreasonable hardship on Embarq or its customers, as required by Ohio Adm. Code 4901:1-5-02(D). Under the rule, Embarq has the burden of showing the hardship.

Embarq does not show that actual harm has or will result from compliance with the rules. As noted in Section III.B., the company fails to identify any unreasonable burden, fails to quantify any unreasonable cost and fails to show that compliance with the disclosure requirements places the company at an unreasonable competitive disadvantage. If anything, the facts of Case No. 06-1354 show that Ohio consumers will face unreasonable hardship if the waivers sought by Embarq are granted.

⁵⁵ Application at 4.

⁵⁶ Id.

D. Embarq's Waiver Requests Are Not in the Public Interest.

The Commission has recognized numerous public benefits from the disclosure rules. In adopting the rules in 2001, the Commission noted that the disclosures:

will ensure that complete disclosures about services, features, and service packages involving local basic services will be made to customers **when they inquire about them**; that customers' service or payment problems will be addressed **first on calls made to the company** for those purposes; and that companies must honor requests by customers to end sales discussions. Each of these objectives relate directly to protecting the consumer from unfair, deceptive, unconscionable tactics such as bait-and-switch, making repair of existing services contingent upon exposure to sales pitches, or simply high-pressure badgering.⁵⁷

The Commission should not allow these benefits to erode.

Such erosion would occur if the Commission were to bend to Embarq's wishes.

The information that consumers would receive from Embarq could be limited to whatever is consistent with Embarq's marketing plan. The company could filter the information to meet its needs, then impose on customers an arbitrary remorse period.

Embarq's Application would not serve the public interest. The Commission should deny the Application.

E. Embarq Had Previously Agreed to Inform Customers Orally About the Amount Needed to Avoid Disconnection.

Embarq seeks a waiver of an alleged staff interpretation of Ohio Adm. Code 4901:1-5-17(K)(4). The rule requires disconnection notices to include the amount a customer must pay to avoid disconnection. Embarq claims that the Commission staff has

⁵⁷ 00-1265, Entry on Rehearing (September 13, 2001) at 17 (emphasis added).

required the company to make this disclosure orally to customers who call in regarding payment arrangements or requesting to pay their bill.⁵⁸

Embarq does not include any documentation regarding the alleged staff interpretation. Embarq's Unilateral Action Plan in Case No. 06-1354, however, does address the issue. The Plan was developed just a year ago to resolve "outstanding issues regarding Embarq's past compliance with MTSS requirements" and "[i]n recognition of Embarq's commitment to customer service...."⁵⁹ The Plan included PUCO monitoring of Embarq's call center for compliance with several MTSS provisions. Among the items to be monitored, Embarq included the oral informing of customers of the amount that must be paid in order to avoid disconnection.⁶⁰ Thus, Embarq unilaterally chose to include this obligation as one of the measures to resolve its MTSS compliance problems.

Embarq is not seeking a waiver of Ohio Adm. Code 4901:1-5-17(K)(4) itself, but rather a supposed staff interpretation of the rule and its own program for MTSS compliance. Thus, a waiver of the rule is not appropriate.

F. Deferral of Installation Charges Is Not an Issue Specific to Low-Income Customers.

Embarq assumes that assisting low-income customers is the only purpose for the requirement to provide customers with the option to defer installation charges over three months. In citing the Commission's 2001 decision to retain the deferment provision, Embarq focuses on the Commission's discussion of universal service.⁶¹ This leads

⁵⁸ Application at 6.

⁵⁹ Plan at 2.

⁶⁰ Id. at 3 (Category II).

⁶¹ Application at 3.

Embarq to conclude, “The company should not be required to offer the option to spread installation charges to every customer, regardless of financial need, if the intended purpose is to assist the low-income subscriber in gaining access to the network.”⁶²

Embarq’s assumption is wrong. Although emphasizing the effect of the rule on low-income consumers, the Commission’s consideration involved a broader application:

Logic dictates that, *particularly* as regards how low-income subscribers are affected, installation charges in any amount (including those of less than \$60.00) may present an impediment to obtaining service and that the deferred payment arrangement allowed under the rule provides an opportunity for helping low-income subscribers to overcome that impediment.⁶³

Thus, although the Commission specifically mentioned the rule’s benefit to low-income customers, the Commission recognized that installation charges in general may present an impediment to obtaining service.

Embarq’s Application noted the proposal, referenced in the 2001 MTSS Order, to allow deferment of installation charges only if the charges exceed \$60.⁶⁴ Embarq did not explain, however, that the proposal was proffered by a group of competitive local exchange carriers (“CLECs”), who argued that **they** were competitively disadvantaged by the rule, because CLEC customers could defer installation charges for three months but might not stay with the CLEC for three months.⁶⁵ The CLECs asserted that such a

⁶² Id.

⁶³ 2001 MTSS Order at 62 (emphasis added).

⁶⁴ Application at 3.

⁶⁵ 2001 MTSS Order at 61.

customer would have a greater economic impact on CLECs than on ILECs.⁶⁶ The CLECs were not referring specifically to low-income customers.⁶⁷

In rejecting the CLECs' proposal, the Commission placed a particular burden on those seeking to change the rule:

Under such circumstances, it should be incumbent upon the party seeking a change in the rule to demonstrate that the harm caused by the rule's application outweighs the benefit which it provides towards achieving the goal of universal service. The CLEC Group has not supported its claim that proposed Rule 4901:1-5-07(C), O.A.C., puts CLECs at a particular competitive disadvantage. The incremental costs associated with activating a new subscriber are simply a cost of doing business that must be borne by every local service provider who undertakes that assignment, regardless of whether it is an ILEC or a CLEC. Moreover, there has been no showing by the CLEC Group that spreading those costs over the three-month period through application of the rule actually increases any provider's risk of not recovering those costs, either in part or in full. Thus, we find that the CLEC Group has failed to demonstrate the severity of the harm, if any, that it or other carriers incur due to the availability of the deferment plan provided for in the rule. Therefore, we will keep the rule in place.⁶⁸

Similarly, Embarq has failed to show that any perceived harm to Embarq that the rule may cause outweighs the rule's benefit in achieving universal service goals. Embarq's sole reason for seeking waiver of the rule is that the "requirement is not imposed on Embarq's competitors, such as wireless and cable companies."⁶⁹ That is not sufficient support for granting the waiver request. The Commission should deny the request.

⁶⁶ See *id.*

⁶⁷ 00-1265, Comments of CoreComm Newco, et. al. (August 31, 2000) at 12.

⁶⁸ 2001 MTSS Order at 62. Because the CLECs were not specifically referring to low-income customers in their proposal, the Commission's reference to "universal service" in discussing deferred installation charges was to the broader definition of universal service found in the Local Service Guidelines. That definition "establishes a minimum level of essential basic telecommunications services to be made available at affordable rates to all who desire such services." Local Service Guidelines, XIII.A.

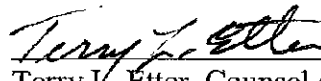
⁶⁹ Application at 3.

IV. CONCLUSION

Embarq has failed to show good cause for the requested waivers. In addition, Embarq has not shown that it suffers an unreasonable hardship in complying with the rules for which the waivers are sought. The Commission should deny the waiver requests, in the interest of more than 335,000 Ohio residential customers who subscribe to Embarq's telephone service.

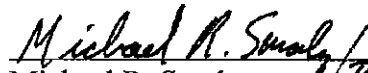
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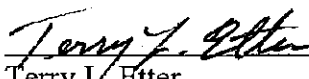
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Embarq's Application for Waiver of Various Disclosure Requirements by the Office of the Ohio Consumers' Counsel, The Appalachian People's Action Coalition, and Board of County Commissioners, Lucas County, Ohio was served by first class United States Mail, postage prepaid, to the parties listed below, on this 9th day of July 2007.


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EMBARQ™

A Guide to EMBARQ™ LineGuard

Voice | Data | Internet | Wireless | Entertainment

LineGuard

How it Works

For a low monthly fee, EMBARQ maintains and repairs the inside wire and telephone jacks used for termination of EMBARQ voice and/or data services. This includes a diagnosis to determine whether the problem is caused by any customer-owned equipment that is connected to the inside wire. "Inside wire" refers to the telephone wire within your home used to connect all inside termination points (jacks and other termination devices) back to the Network Interface Device (NID) or house protector on your home. The NID and/or house protector equipment and any wiring on your property leading up to the NID/protector is the property of EMBARQ.

LineGuard Benefits

- Cost savings on future repairs
- One low monthly rate per line
- Consistent, reliable service
- Coverage for standard wear and tear, deterioration by the elements, and animal damage
- Coverage on all extensions of the same phone number located within the same structure where the EMBARQ point of entry is located
- No charge for a limited number of trouble calls related to customer equipment (phone, fax, alarm system, etc.) (See Limitations on next page)
- Coverage for re-activation/reconfiguration of existing already terminated inside wire and jacks in good working condition. For example, if a residence previously had multiple lines, it is possible that not all inside wire and jacks will be activated when a new occupant moves in and establishes telephone service. LineGuard will cover the reactivation of these jacks.
- Coverage for third party damage, such as impairment caused during the installation of a burglar alarm or satellite dish
- Coverage for damage to wiring caused by lightning strikes

Limitations and Exclusions

- Damage resulting from fire, gross negligence, willful damage, vandalism, sub-standard wiring and catastrophes, such as floods and earthquakes
- Repairs to customer-owned telephones and other types of equipment that may be connected to a telephone jack
- The connection of non-terminated NID wires (wires hanging loose at the NID or house protector) and the relocation or installation of jacks and interior wiring
- The replacement of voice-grade interior wire with interior wire for high-speed data applications.
- The replacement of voice jacks with jacks used for high-speed data or other applications. Existing inside wire jacks will only be replaced

with comparable jacks. Where combination voice/data/video jacks exist (commonly referred to as multi-use jacks), and the voice or data portion of the jack is determined to be faulty, EMBARQ technicians will place a new voice and/or data jack adjacent to the existing multi-use jack and leave the existing multi-use jack in place

- Service in recreational vehicles, such as travel trailers, campers, boats, and other temporarily located vehicles.
- Maintenance of inside wiring when environmental factors at the location present a threat to the health and safety of the repair personnel
- Maintenance of wiring not installed according to EMBARQ technical standards or installation guidelines
- Repair of existing problems known but not reported at the time customer subscribes to LineGuard
- If within a 90 day period, you make two reports of access line trouble and EMBARQ in both instances isolates the trouble to the same problem associated with any customer premises equipment you own or lease (telephones, alarm systems, modems, etc.), EMBARQ will assess an isolation charge for any subsequent service calls you make that are isolated to the same problem.
- Repair or replacement of structured wiring consisting of in-home wiring and multi-purpose jacks or other termination devices, other than that intended for the sole purpose of delivering EMBARQ telephone or data service, including, but not limited to: coaxial cable, optical fiber, or wiring associated with alarm systems, closed circuit video surveillance, audio/visual equipment, or home automation systems
- Repair or replacement of structured wiring hardware consisting of "smart panels", central wiring cabinets, or junction boxes associated with structured wiring, including internal modules or wire termination/connection devices typically used in internal distribution points

Limitation of Liability and Disclaimer of Warranties

EMBARQ'S LIABILITY FOR DAMAGES, WILL NOT EXCEED THE LESSER OF A) ACTUAL DAMAGES, OR B) TWO YEARS' CHARGES FOR LINEGUARD. EMBARQ IS NOT LIABLE FOR DELAYS, FAILURE IN PERFORMANCE, OR ANY LOSS OR DAMAGE DUE TO ANY CAUSE BEYOND EMBARQ'S REASONABLE CONTROL. EMBARQ DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EMBARQ also will not be liable for any incidental or consequential damages, including but not limited to lost profits, arising from the customer's use of or inability to use the installed or repaired premise wiring.

Special Circumstances

Customers in apartments, condos and other multiunit housing should consult with their residential management or landlord prior to ordering LineGuard to determine if EMBARQ technicians are permitted to repair inside wire or jacks in the customer's dwelling.

In some instances, EMBARQ may need to relocate your inside wire during repair. For example, if the trouble is in your inside wire that runs through your attic or crawl space, the technician

may determine that the repair of wiring may be handled by rerouting the wire rather than repairing the defective wire in the current location.