

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The Commission finds:

- (1) 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 (LECs) may be permitted by the Commission to obtain, due to an extreme, unique, or unforeseeable weather-related incident, 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.

To be granted a grace period under Rule 4901:1-5-08(D), O.A.C., LECs must show either of two things: (a) that a declaration of emergency has been issued by the governor or a duly authorized county official for the county in which the involved exchange is situated; or (b) in the exchange(s) involved, the LEC has experienced at least a 300 percent increase in the number of out-of-service trouble reports as compared to the historical average number of such reports for the exchange in the previous three years. Further, the rule provides, in subparagraph (D)(2), that "exchanges with ten or fewer daily out-of-service reports during the requested grace period are not eligible for this grace period."

- (2) On Sunday, September 14, 2008, Hurricane Ike hit the state of Ohio as a massive windstorm. On September 15, 2008, Governor Strickland issued a declaration of emergency for the entire state.
- (3) Due to the storm and its aftermath, on September 24, 2008, United Telephone Company of Ohio d/b/a Embarq (Embarq), acting pursuant to Rule 4901:1-5-08(D), O.A.C., filed an application seeking an additional 48-hour grace period to clear out-of-service trouble reports in certain of its exchanges. Embarq originally sought to have the grace period apply to all trouble reports in at

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least 88 exchanges from the period from September 15 through 19. However, on October 24, 2008, Embarq filed a pleading by which it modified and narrowed the scope of its application so as to have the requested grace period, if granted, apply in the 55 exchanges listed in Attachment 1 to its October 24, 2008 pleading, each of which, Embarq claims, had at least 10 out-of-service reports "on a given day" during the period from September 15 to 19, 2008 (Embarq's Supplemental Waiver Information at 2).

- (4) Rule 4901:1-5-08(D)(4), O.A.C., states that if the Commission or an attorney examiner appointed by the Commission does not act to suspend or reject a request for a grace period within forty-five days of its filing, then the request for the grace period will be presumed granted. By attorney examiner's entry issued on November 6, 2008, Embarq's application for a grace period was suspended before it would otherwise have been presumptively granted and a motion to intervene filed by the office of the Ohio Consumers' Counsel (OCC) was granted.
- (5) On November 13, 2008, OCC filed comments by which OCC opposed, in part, Embarq's grace period application, as modified by its October 24, 2008 pleading. Embarq, on November 24, 2008, filed a response to OCC's comments, to which OCC filed reply comments on December 8, 2008.
- (6) In its comments, OCC recommends that the Commission should significantly reduce the timeframes under which nearly all of the 55 involved exchanges would qualify for a grace period. OCC noted that several exchanges, for most or all of the timeframes specified by Embarq, did not have 11 or more out-of-service trouble reports, as required to qualify for a grace period under MTSS Rule 8(D)(2) (OCC Comments at 4-6). In addition, OCC points out that the trouble reports for some exchanges did not occur until several days after the windstorm, and thus do not appear to be related to the weather incident (*Id.* at 6-8). OCC also suggests that the Commission examine the normal levels of out-of-service trouble reports to determine whether they routinely meet the threshold for MTSS Rule 8(D)(2) (*Id.* at 9).
- (7) Embarq, in its response to OCC's comments, says that OCC has misinterpreted MTSS Rule 8(D) by eliminating the possibility of having the grace period apply to any day, in any exchange, on which less than 11 trouble reports were received. As its bottom line

position, Embarq maintains that any exchange with 11 or more out-of-service reports during any day within the requested grace period is eligible and that each of the exchanges included in its modified application had at least 11 daily out-of service reports during one or more of the days included in its grace period request.

- (8) OCC, in its reply to Embarq's response to its comments, says Embarq's interpretation of MTSS Rule 8(D)(b)(2) is flawed, while its own position is supported by Commission precedent. In OCC's view, the rule defines a grace period as only those days in which an exchange experienced more than ten out-of-service trouble reports due a weather-related incident. Further, OCC says that the Commission's decision in a prior case, namely 07-511,¹ involving a request by Verizon North Inc. (Verizon) to be excused from meeting certain service quality performance benchmarks, supports the same interpretation of the rule espoused by OCC in this case. In 07-511, the Commission excused Verizon' missed repairs only to the extent that they occurred on days when an exchange had more than ten trouble reports. In its reply, OCC reiterates its argument that Embarq has not met its burden of proof in this case because the documentation that Embarq submitted does not support Embarq's assertions that outages reported to the company days after the windstorm were storm-related.
- (9) On March 24, 2009, in response to a request by the Commission's staff, Embarq filed information regarding the number of trouble reports in the involved exchanges during September of each of the last three years ("three-year data"). On March 30, 2009, OCC filed comments in response to Embarq's March 24, 2009, filing. In its comments, OCC submits that the submitted three-year data actually bolsters the position already espoused by OCC, namely that Embarq has not fully justified all aspects of the waiver it has requested and that, consequently, the Commission should limit both the number of exchanges and the number of days to which the grace period, if granted, should apply.
- (10) Upon review of the record as a whole, the Commission finds that Embarq's grace period waiver request should be granted in part and denied in part as discussed below. In order to make our

¹ *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 (07-511), Finding and Order issued on March 5, 2008.*

determination on Embarq's grace period waiver request, we have to evaluate the information provided under the requirements of Rule 4901:1-5-08(D), O.A.C. Those requirements reflect that, in order to be granted a waiver under the rule, Embarq must establish that the weather-related incident results in either a 300 percent 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 or 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. Additionally, the involved exchange must have more than ten out-of-service reports during the requested grace period. The function of the grace period is to extend, by an additional 48 hours, the 72-hour period that a company already has, under Rule 4901:1-5-08(C), O.A.C., to reestablish service before an affected customer's right to an out-of-service credit accrues. Based on our review, the Commission finds specifically that:

- (a) A 48-hour grace period should apply, under the governor's declaration of an emergency, with regard to the out-of-service trouble reports occurring on September 14, 2008, only in the following exchanges: Centerburg, Greenville, Lebanon, Mansfield, Mason, Morrow, Mount Vernon, Warren, and Wooster.
- (b) A 48-hour grace period should apply, under the 300 percent standard, with regard to the out-of-service trouble reports occurring on September 15, 2008, only in the following exchanges: Adario, Alexandria, Bartlett, Berlin Center, Bradford, Cardington, Centerburg, Chesterville, Cortland, Croton, Danville, Eaton, Frazeyburg, Fredericktown, Gambier, Hebron, Junction City, Kidron, Killbuck, Kinsman, Lake Milton, Lebanon, Lexington, Lucas, Mansfield, Mason, McConnelsville, Millersburg, Morrow, Mount Gilead, Mount Sterling, Mount Vernon, New Lyme, New Paris, Orrville, Pataskala, Rittman, Shreve, Sunbury, Utica, Warren, Wayland, Waynesville, and Wooster.

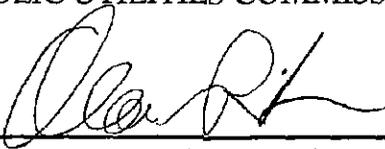
- (c) A 48-hour grace period should apply, under the 300 percent standard, with regard to the out-of-service trouble reports occurring on September 16, 2008, only in the following exchanges: Adamsville, Adario, Belleville, Camden, Centerburg, Croton, Danville, Frazeyburg, Fredericktown, Gambier, Glenmont, Kidron, Killbuck, Kinsman, Lebanon, Lexington, Lucas, Martinsburg, Mason, Millersburg, Morrow, Mount Sterling, Mount Vernon, Newton Falls, Rittman, Shiloh, Shreve, Waynesville, and Wooster.
- (d) A 48-hour grace period should apply, under the 300 percent standard, with regard to the out-of-service trouble reports occurring on September 17, 2008, only in the following exchanges: Centerburg, Danville, Fredericktown, Gambier, Killbuck, Lexington, Millersburg, Mount Sterling, Mount Vernon, and Waynesville.
- (e) A 48-hour grace period should apply, under the 300 percent standard, with regard to the out-of-service trouble reports occurring on September 18, 2008 only in the Holmesville and Mount Vernon exchanges, and should apply with regard to the out-of-service trouble reports occurring on September 19, 2008, only in the Fredericktown Exchange.
- (f) In all other respects, Embarq's grace period application is denied as failing to satisfy the requirements of Rule 4901:1-5-08(D), O.A.C.

It is, therefore,

ORDERED, That, in accordance with the above findings, Embarq's grace period waiver request should be granted in part and denied in part, as specified in Finding (10) of this entry. It is, further,

ORDERED, That copies of this entry be served upon Embarq, OCC, and all interested persons of record.

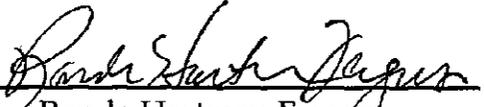
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



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Valerie A. Lemmie

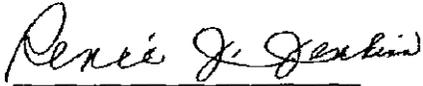


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Renee J. Jenkins
Secretary