

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

WILLIAM DOUGLAS FULGHUM, *et al.*,

Plaintiffs,

v.

EMBARQ CORPORATION, *et al.*,

Defendants.

Civil Action No. 07-CV-2602 (KHV/JPO)

**DEFENDANTS' AMENDED ANSWER
AND DEFENSES TO SECOND
AMENDED COMPLAINT**

Defendants Embarq Corporation (“Embarq”), Embarq Retiree Medical Plan, Employee Benefits Committee of Embarq Corporation (the “Committee”), Sprint Nextel Corporation (“Sprint Nextel”), Embarq Mid-Atlantic Management Services Company, Sprint Retiree Medical Plan, Group Health Plan for Certain Retirees and Employees of Sprint Corporation, Sprint Welfare Benefit Plan for Retirees and Non-FlexCare Participants, Sprint Group Life and Long-Term Disability Plan, Carolina Telephone and Telegraph Company, LLC (“CT&T”), Group Life Accidental Death and Dismemberment and Dependent Life Plan for Employees of Carolina Telephone and Telegraph Company, Carolina Telephone and Telegraph Company Sickness Death Benefit Plan (also referred to as the “VEBA”), and Randall T. Parker (“Parker”) (collectively “Defendants”), by and through their attorneys, hereby answer Plaintiffs’ Amended Complaint in accordance with the numbered paragraphs thereof as follows:

INTRODUCTION

1. Defendants admit that Plaintiffs purport to bring this action under the statutory provisions described in Paragraph 1 of the Second Amended Complaint and that they seek the relief described therein. Defendants deny that they violated any of these statutory provisions or

deprived Plaintiffs of any rights. Defendants deny the remaining allegations of Paragraph 1 of the Second Amended Complaint.

2. Defendants incorporate by reference their responses to Paragraphs 9 through 26 of the Second Amended Complaint as if fully repeated herein. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Second Amended Complaint regarding “the Class and Sub-Classes” and, therefore, Defendants deny these allegations. Defendants deny the remaining allegations of Paragraph 2 of the Second Amended Complaint.

3. Defendants admit that Plaintiffs purport to seek the relief described in Sub-Paragraphs (a) and (b) of Paragraph 3 of the Second Amended Complaint. Defendants deny the remaining allegations of Paragraph 3 of the Second Amended Complaint.

JURISDICTION

4. Defendants admit that Plaintiffs purport to invoke the jurisdiction of this Court pursuant to the statutory provisions described in Paragraph 4 of the Second Amended Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4 of the Second Amended Complaint and, therefore, Defendants deny these allegations.

5. On information and belief, Defendants admit that the Plaintiffs listed in Paragraph 5 of the Second Amended Complaint, with the exception of Plaintiff Sue Barnes, filed Charges of Discrimination based upon age with the EEOC prior to the filing of the Second Amended Complaint, that 60 days have elapsed since the filing of these Charges, that the EEOC has issued Right to Sue letters to Plaintiffs Fulghum, Daniel, Hollingsworth, Dorman, Joyner, Games and Bullock, and that the Second Amended Complaint was filed within 90 days of the date listed on

these Right to Sue letters. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding whether Plaintiff Barnes filed a Charge or received a Right to Sue letter, or whether the EEOC “is issuing Right to Sue Letters to these Plaintiffs” and, therefore, Defendants deny these allegations. Defendants admit that the Plaintiffs listed in Paragraph 5 of the Second Amended Complaint purport to assert claims under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 626(b) and demand jury trial on all such claims triable by jury. Defendants deny the remaining allegations of Paragraph 5 of the Second Amended Complaint.

6. Defendants admit that Embarq’s Employee Benefits Committee is the Plan Administrator for the welfare benefit plans sponsored by Embarq, and that certain day-to-day administrative responsibilities have been delegated by the Committee to Randall T. Parker, Director-Benefits. Defendants further admit that the medical, prescription drug, and life insurance benefits at issue in this litigation have not been restored. The remaining allegations of Paragraph 6 of the Second Amended Complaint purport to characterize written documents, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the documents or do not describe the contents of the documents in their entirety.

7. The allegations contained in Paragraph 7 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 7 of the Second Amended Complaint.

VENUE

8. The allegations contained in Paragraph 8 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 8 of the Second Amended Complaint.

PARTIES

PLAINTIFFS

9. Defendants admit that Embarq's records reflect that Plaintiff William Douglas Fulghum ("Fulghum") is a resident of Fayetteville, North Carolina, was employed by CT&T, was born in 1938, began working on or about June 1956, retired¹ on or about September 1, 1996 at the age of 58, and was 69 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Second Amended Complaint regarding whether Plaintiff Fulghum was "employed" by "other predecessor corporations to Defendant Embarq Corporation" and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 9 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 9 of the Second Amended Complaint.

10. Defendants admit that Embarq's records reflect that Plaintiff Dorsey Daniel ("Daniel") is a resident of Tarboro, North Carolina, was employed by CT&T, was born in 1940, began working on or around July 1965, retired on or about June 1, 1999 at the age of 58, and was

¹ As used in Paragraphs 9-23, "retired" means either the "retirement date" and/or the date that a plaintiff began receiving a "pension benefit" as reflected in Embarq's records, and not necessarily a plaintiff's last day of work.

67 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Second Amended Complaint regarding whether Plaintiff Daniel was “employed” by “other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 10 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 10 of the Second Amended Complaint.

11. Defendants admit that Embarq’s records reflect that Plaintiff John Douglas Hollingsworth (“Hollingsworth”) is a resident of Fayetteville, North Carolina, was employed by CT&T, was born in 1944, began working on or around June 1964, retired on or about December 31, 2001 at the age of 57, and was 63 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Second Amended Complaint regarding whether Plaintiff Hollingsworth was “employed” by “other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 11 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 11 of the Second Amended Complaint.

12. Defendants admit that Embarq’s records reflect that Plaintiff Willie Dorman (“Dorman”) is a resident of Erwin, North Carolina, was employed by CT&T, was born in 1938, began working on or around April 1959, retired on or about March 1, 1994 at the age of 56, and

was 69 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Second Amended Complaint regarding whether Plaintiff Dorman was “employed” by “other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 12 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 12 of the Second Amended Complaint.

13. Defendants admit that Embarq’s records reflect that Plaintiff Robert E. King (“King”) is a resident of Ocala, Florida, was employed by United Telephone Company of Florida, was born in 1930, began working on or about April 1959, retired on or about September 1, 1993 at the age of 63, and was 77 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Second Amended Complaint regarding whether Plaintiff King was “employed” by “Sprint of Florida, and other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 13 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 13 of the Second Amended Complaint.

14. Defendants admit that Embarq’s records reflect that Plaintiff Calvin Bruce Joyner (“Joyner”) is a resident of Tarboro, North Carolina, was employed by CT&T, was born in 1938, began working on or about June 25, 1956, retired on or about March 1, 1994 at the age of 56, and

was 70 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Second Amended Complaint regarding whether Plaintiff Joyner was “employed” by “other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 14 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 14 of the Second Amended Complaint.

15. Defendants admit that Embarq’s records reflect that Plaintiff Timothy Dillon (“Dillon”) is a resident of Niceville, Florida, was employed by Florida Telephone Corporation and, subsequently, by North Supply Company, was born in 1943, began working on or around May 1969, retired in or around January 2003 at the age of 59, and was 64 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Second Amended Complaint regarding whether Plaintiff Dillon was “employed” by “other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 15 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 15 of the Second Amended Complaint.

16. Defendants admit that Embarq’s records reflect that Plaintiff Sue Barnes (“Barnes”) is a resident of Wilson, North Carolina, was employed by CT&T on two occasions, initially in 1959 and subsequently in 1994, was born in 1941, retired in or about March 2003 at

the age of 61, and was 66 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Second Amended Complaint regarding whether Plaintiff Barnes was “employed” by “other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 16 constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 16 of the Second Amended Complaint.

17. Defendants admit that Embarq’s records reflect that Plaintiff William Games (“Games”) is a resident of Camden, North Carolina, was employed by CT&T, was born in 1940, began working on or about October 1959, retired on or about December 31, 2001 at the age of 61, and was 67 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Second Amended Complaint regarding whether Plaintiff Games was “employed” by “other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 17 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 17 of the Second Amended Complaint.

18. Defendants admit that Embarq’s records reflect that Plaintiff Betsy Bullock (“Bullock”) is a resident of Tarboro, North Carolina, was employed by CT&T, was born in 1943, began working on or about August 1971, retired on or about December 31, 2001 at the age of 58, and was 64 years old at the time the Second Amended Complaint was filed. After reasonable

investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Second Amended Complaint regarding whether Plaintiff Bullock was “employed” by “other predecessor corporations to Defendant Embarq Corporation” and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 18 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 18 of the Second Amended Complaint.

19. Defendants admit that Embarq’s records reflect that Plaintiff Kenneth A. Carpenter (“K. Carpenter”) is a resident of Mansfield, Ohio, was employed by United Telephone Company of Ohio, was born in 1938, began working on or about 1965, retired on or about January 1, 1998 at the age of 59, and was 69 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Second Amended Complaint regarding whether Plaintiff K. Carpenter was “employed” by “other predecessor corporations to Defendant Embarq Corporation” or whether he was employed solely in Ohio and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 19 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 19 of the Second Amended Complaint.

20. Defendants admit that Embarq’s records reflect that Plaintiff Betty A. Carpenter (“B. Carpenter”) is a resident of Mansfield, Ohio, was employed by United Telephone Company of Ohio, was born in 1942, began working on or about 1978, retired on or about November 1, 1997 at the age of 55, and was 65 years old at the time the Second Amended Complaint was

filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Second Amended Complaint regarding whether Plaintiff B. Carpenter was “employed” by “other predecessor corporations to Defendant Embarq Corporation” or whether she was employed solely in Ohio and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 20 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 20 of the Second Amended Complaint.

21. Defendants admit that Embarq’s records reflect that Plaintiff Carl W. Somdahl (“Somdahl”) is a resident of Pacific City, Oregon, was employed by United Telephone Company of the Northwest, was born in 1934, began working on or about 1977, retired on or about January 1999 at the age of 65, and was 74 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Second Amended Complaint regarding whether Plaintiff Somdahl was “employed” by “other predecessor corporations to Defendant Embarq Corporation” or whether he was employed solely in Oregon and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 21 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 21 of the Second Amended Complaint.

22. Defendants admit that Embarq’s records reflect that Plaintiff William F. Dugger (“Dugger”) is a resident of Gleneden Beach, Oregon, was employed by United Telephone Company of the Northwest, was born in 1924, began working on or about 1966, retired on or

about November 1985 at the age of 61, and was 83 years old at the time the Second Amended Complaint was filed. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Second Amended Complaint regarding whether Plaintiff Dugger was “employed” by “other predecessor corporations to Defendant Embarq Corporation” or whether he was employed solely in Oregon and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 22 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 22 of the Second Amended Complaint.

23. Defendants admit that Embarq’s records reflect that Plaintiff Lewis D. Sams (“Sams”) is a resident of Johnson City, Tennessee, was born in 1935, began working in 1964, retired on or about August 1994 at the age of 59, and was 73 years old at the time the Second Amended Complaint was filed. Defendants deny that Plaintiff Sams was employed by United Inter-Mountain Telephone Company. By way of further answer, Embarq’s records reflect that Plaintiff Sams worked for United Telephone Southeast, Inc. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Second Amended Complaint regarding whether Plaintiff Sams was “employed” by “other predecessor corporations to Defendant Embarq Corporation” or whether he was employed solely in Tennessee and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 23 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 23 of the Second Amended Complaint.

24. Defendants incorporate by reference the foregoing response to Paragraph 5 of the Second Amended Complaint as if fully repeated herein.

25. Defendants admit that the 15 named plaintiffs in this action purport to bring this lawsuit on behalf of themselves and as representatives of others. Defendants further admit that the other individuals listed in Paragraph 25 of the Second Amended Complaint purport to join this lawsuit and bring individual claims of age discrimination. Defendants deny the remaining allegations of Paragraph 25 of the Second Amended Complaint.

26. Defendants admit that attached as Appendix A to the Second Amended Complaint was information regarding the “Individual Age Discrimination Plaintiffs.” Defendants are without knowledge or information sufficient to form a belief as to the truth of the contents of Appendix A and, therefore, Defendants deny these allegations. Defendants admit further that a single Charge of discrimination was filed with the EEOC on behalf of all of the individuals listed in Appendix A, except for Robert L. Norville, Sr., Trudy J. White, and Kathy Beach Jones, more than 60 days before the date of the Second Amended Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26 of the Second Amended Complaint and, therefore, Defendants deny these allegations.

DEFENDANTS

27. Defendants admit that Embarq is a corporation incorporated under the laws of the state of Delaware, with its principal place of business in Overland Park, Kansas. Defendants further admit that Embarq was created on May 17, 2006, as a spin-off of Sprint Nextel’s local communications business and product distribution operations, is now traded on the New York Stock Exchange under the ticker symbol “EQ,” and for 2007 had “total revenues” greater than \$6

billion. Defendants deny the remaining allegations of Paragraph 27 of the Second Amended Complaint.

28. The allegations contained in Paragraph 28 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required and/or purport to characterize a written document, the terms of which speak for themselves. Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. To the extent that a response is required, Defendants deny the allegations of Paragraph 28 of the Second Amended Complaint.

29. The allegations contained in Paragraph 29 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety.

30. The allegations contained in Paragraph 30 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety.

31. The allegations contained in Paragraph 31 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety.

32. The allegations contained in Paragraph 32 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a

response is required, Defendants deny the allegations of Paragraph 32 of the Second Amended Complaint.

33. Defendants deny the allegations of Paragraph 33 of the Second Amended Complaint.

34. Defendants admit that the Embarq Retiree Medical Plan is an employee welfare benefit plan within the meaning of ERISA. The remaining allegations of the first sentence of Paragraph 34 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety. The remaining allegations of Paragraph 34 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 34 of the Second Amended Complaint.

35. The allegations contained in Paragraph 35 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety.

36. Defendants admit that Sprint Nextel is a corporation incorporated under the laws of the State of Kansas, with its principal place of business in Overland Park, Kansas. Defendants further admit that Sprint Nextel was formerly known as United Utilities, Incorporated, United Telecommunications, Inc., and Sprint Corporation. Defendants deny that Sprint Nextel's principal place of business is Reston, Virginia. The remaining allegations of Paragraph 36 of the Amended Complaint are vague and undefined, such that Defendants are without knowledge or

information sufficient to form a belief as to the truth of these allegations and, therefore, Defendants deny these allegations.

37. The allegations contained in the first clause of Paragraph 37 of the Second Amended Complaint purport to characterize written documents, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the documents or do not describe the contents of the documents in their entirety. The remaining allegations of Paragraph 37 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 37 of the Second Amended Complaint.

38. Defendants deny that Sprint Nextel has a history of age discrimination. Defendants admit that, in or around May 2006, Sprint Nextel agreed to pay \$5.5 million to settle a class action brought in the Northern District of Georgia for a class of 462 former employees. Defendants also admit that, on or around May 19, 2007, Sprint Nextel agreed to pay \$57 million to settle a class action brought in the District of Kansas for 1,697 former employees. Defendants deny the remaining allegations of Paragraph 38 of the Second Amended Complaint.

39. The allegations contained in Paragraph 39 of the Second Amended Complaint regarding the transfer of certain “assets and obligations” purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety. The remaining allegations of Paragraph 39 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 39 of the Second Amended Complaint.

40. Defendants deny the allegations of Paragraph 40 of the Second Amended Complaint.

41. Admitted, except that Embarq Mid-Atlantic Management Services Company's principal place of business is Overland Park, Kansas.

42. The allegations contained in the first clause of Paragraph 42 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety. The remaining allegations of Paragraph 42 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 42 of the Second Amended Complaint.

43. Defendants admit that the plans are employee welfare benefit plans within the meaning of ERISA. The remaining allegations of Paragraph 43 of the Second Amended Complaint purport to characterize written documents, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the documents or do not describe the contents of the documents in their entirety.

44. The allegations contained in Paragraph 44 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 44 of the Second Amended Complaint.

45. Admitted, except that CT&T is a limited liability company, not a corporation, and that its principal place of business is Overland Park, Kansas.

46. The allegations contained in the first sentence of Paragraph 46 of the Second Amended Complaint that describe the Plan Administrators and Plan Sponsors of the plans referenced in the Second Amended Complaint purport to characterize written documents, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the documents or do not describe the contents of the documents in their entirety. The remaining allegations of the first sentence of Paragraph 46 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny these allegations. Defendants deny the remaining allegations of Paragraph 46 of the Second Amended Complaint.

47. Defendants admit that the Group Life, Accidental Death and Dismemberment and Dependent Life Plan for Employees of Carolina Telephone and Telegraph Company is an employee welfare benefit plan within the meaning of ERISA. The remaining allegations of the first sentence of Paragraph 47 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety. The remaining allegations of Paragraph 47 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 47 of the Second Amended Complaint.

48. Defendants admit that the Carolina Telephone and Telegraph Company Sickness Death Benefit Plan, also referred to as the "VEBA," is an employee welfare benefit plan within the meaning of ERISA. The remaining allegations of the first sentence of Paragraph 47 of the Second Amended Complaint purport to characterize a written document, the terms of which

speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety. The remaining allegations of Paragraph 48 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 48 of the Second Amended Complaint.

49. Defendants admit that Parker is a Kansas resident. The allegations contained in the second sentence of Paragraph 49 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny these allegations. Defendants deny the remaining allegations of Paragraph 49 of the Second Amended Complaint.

CLASS ACTION ALLEGATIONS

50. Defendants admit that Plaintiffs purport to bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the Class and Sub-Classes described in Paragraph 50 of Amended Complaint. Defendants deny the remaining allegations of Paragraph 50 of the Second Amended Complaint.

51. The allegations contained in the first sentence of Paragraph 51 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny these allegations. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 51 of the Second Amended Complaint and, therefore, Defendants deny these allegations. The allegations in the third sentence of Paragraph 51 of the Second Amended Complaint purport to characterize a written document, the terms of which

speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety.

52. The allegations contained in Paragraph 52(a) of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document or do not describe the contents of the document in their entirety. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 52 of the Second Amended Complaint and, therefore, Defendants deny these allegations.

53. The allegations contained in Paragraph 53 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 53 of the Second Amended Complaint.

54. Defendants admit that Plaintiffs purport to propose the individuals listed in Paragraph 54 of the Second Amended Complaint as representative plaintiffs for the Class. The remaining allegations of Paragraph 54 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 54 of the Second Amended Complaint.

55. Defendants admit that Plaintiffs purport to propose the individuals listed in Paragraph 55 of the Second Amended Complaint as representative plaintiffs for the VEBA Sub-Class. The remaining allegations of Paragraph 55 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is

required, Defendants deny the remaining allegations of Paragraph 55 of the Second Amended Complaint.

56. Defendants admit that Plaintiffs purport to propose the individuals listed in Paragraph 56 of the Second Amended Complaint as representative plaintiffs for the Ohio Age Claim Sub-Class. The remaining allegations of Paragraph 56 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 56 of the Second Amended Complaint.

57. Defendants admit that Plaintiffs purport to propose the individuals listed in Paragraph 57 of the Second Amended Complaint as representative plaintiffs for the Oregon Age Claim Sub-Class. The remaining allegations of Paragraph 57 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 57 of the Second Amended Complaint.

58. Defendants admit that Plaintiffs purport to propose the individual named in Paragraph 58 of the Second Amended Complaint as a representative plaintiff for the Tennessee Age Claim Sub-Class. The remaining allegations of Paragraph 58 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 58 of the Second Amended Complaint.

59. The allegations contained in Paragraph 59 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 59 of the Second Amended

Complaint. Alternatively, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 of the Second Amended Complaint and, therefore, Defendants deny these allegations.

60. The allegations contained in Paragraph 60 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 60 of the Second Amended Complaint. Alternatively, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 60 of the Second Amended Complaint and, therefore, Defendants deny these allegations.

61. The allegations contained in Paragraph 61 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 61 of the Second Amended Complaint.

62. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last two sentences of Paragraph 62 of the Second Amended Complaint and, therefore, Defendants deny these allegations. The remaining allegations of Paragraph 62 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the remaining allegations of Paragraph 62 of the Second Amended Complaint.

STATEMENT OF FACTS

63. Defendants admit that Embarq provides communications products and services to customers domestically and operates its local telecommunications business principally in Kansas, North Carolina, South Carolina, Florida, Ohio, Pennsylvania, Indiana, New Jersey,

Texas, Virginia, Tennessee, Minnesota, Missouri, Nevada, Nebraska, Wyoming, Oregon and Washington. The remaining allegations of Paragraph 63 of the Second Amended Complaint are vague and undefined, such that Defendants are without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, Defendants deny these allegations.

64. The allegations contained in Paragraph 64 of the Second Amended Complaint are vague and undefined, such that Defendants are without sufficient knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, Defendants deny these allegations.

65. Defendants admit that CT&T provides local telecommunications services in North Carolina under the Embarq name and logo. Defendants deny the remaining allegations of Paragraph 65 of the Second Amended Complaint.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 66 of the Second Amended Complaint and, therefore, Defendants deny these allegations. Defendants deny the allegations contained in the second sentence of Paragraph 66 of the Second Amended Complaint. The remaining allegations in Paragraph 66 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

67. Defendants admit that CT&T merged into United Utilities, Inc. on March 28, 1969. The remaining allegations of Paragraph 67 of the Amended Complaint are vague and undefined, such that, after reasonable investigation, Defendants are without knowledge or

information sufficient to form a belief as to the truth of these allegations and, therefore, Defendants deny these allegations.

68. The allegations contained in Paragraph 68 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

69. The allegations contained in Paragraph 69 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

70. The allegations contained in Paragraph 70 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

71. Defendants admit that United Utilities, Inc. changed its name to United Telecommunications, Inc. in 1972. The remaining allegations of Paragraph 71 of the Amended Complaint are vague and undefined, such that, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, Defendants deny these allegations.

72. The allegations contained in Paragraph 72 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

73. The allegations contained in Paragraph 73 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

74. Defendants deny the allegations of Paragraph 74 of the Second Amended Complaint.

75. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 of the Second Amended Complaint regarding what Plaintiffs found important or what motivated Plaintiffs. Defendants deny the remaining allegations of Paragraph 75 of the Second Amended Complaint.

76. Defendants admit that CT&T merged with United Telephone Company of the Carolinas, Inc. in October 1978 and with Norfolk Carolina Telephone Company in December 1979. The remaining allegations of Paragraph 76 of the Amended Complaint are vague and undefined, such that, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, Defendants deny these allegations.

77. The allegations contained in Paragraph 77 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

78. Defendants deny the allegations of Paragraph 78 of the Second Amended Complaint.

79. The allegations contained in Paragraph 79 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. To the extent that a response is required, Defendants deny the allegations of Paragraph 79 of the Second Amended Complaint.

80. Defendants deny that they made any misrepresentations about any of the benefits listed in Paragraph 80 of the Second Amended Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 80 of the Second Amended Complaint and, therefore, Defendants deny these allegations.

81. Defendants deny the allegations of Paragraph 81 of the Second Amended Complaint.

82. The allegations contained in Paragraph 82 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

83. Defendants deny the allegations contained in Paragraph 83 of the Second Amended Complaint.

84. The allegations contained in Paragraph 84 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. To the extent

that a response is required, Defendants deny the allegations of Paragraph 84 of the Second Amended Complaint.

85. The allegations contained in Paragraph 85 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. To the extent that a response is required, Defendants deny the allegations of Paragraph 85 of the Second Amended Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of the Second Amended Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Second Amended Complaint.

88. The allegations contained in the first sentence of Paragraph 88 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. Defendants deny the remaining allegations of Paragraph 88 of the Second Amended Complaint. Defendants specifically deny that they did not reserve or clearly and conspicuously communicate the right to reduce or terminate benefits.

89. Defendants deny the allegations of Paragraph 89 of the Second Amended Complaint.

90. Defendants admit that on February 27, 1992, United Telecommunications changed its name to Sprint Corporation. The remaining allegations contained in Paragraph 90 of

the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

91. The allegations contained in Paragraph 91 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

92. Defendants admit that, in or around March 1993, Sprint Corporation completed its merger with Centel Corporation. Defendants also admit that Centel sponsored certain welfare benefit plans for its employees and retirees. The remaining allegations contained in Paragraph 92 of the Second Amended Complaint relating to such plans purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. Defendants deny the remaining allegations of Paragraph 92 of the Second Amended Complaint.

93. The allegations contained in Paragraph 93 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. To the extent that a response is required, Defendants deny the allegations of Paragraph 93 of the Second Amended Complaint.

94. The allegations contained in Paragraph 94 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. To the extent that a response is required, Defendants deny the allegations of Paragraph 94 of the Second Amended Complaint.

95. The allegations contained in Paragraph 95 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. To the extent that a response is required, Defendants deny the allegations of Paragraph 95 of the Second Amended Complaint.

96. The allegations contained in Paragraph 96 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety. To the extent that a response is required, Defendants deny the allegations of Paragraph 96 of the Second Amended Complaint.

97. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 97 of the Second Amended Complaint and, therefore, Defendants deny these allegations. Defendants further deny that Plaintiffs were “forced” to take any action.

98. Defendants deny the allegations of Paragraph 98 of the Second Amended Complaint.

99. Defendants deny the allegations of Paragraph 99 of the Second Amended Complaint.

100. The allegations contained in Paragraph 100 of the Second Amended Complaint purport to characterize a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

101. The allegations of Paragraph 101 of the Second Amended Complaint purport to characterize the contents of a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent that they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

102. The allegations of Paragraph 102 of the Second Amended Complaint purport to characterize the contents of a written document, the terms of which speak for themselves and, therefore, Defendants deny these allegations to the extent that they are inconsistent with the document(s) or do not describe the contents of the document(s) in their entirety.

103. Defendants deny the allegations of Paragraph 103 of the Second Amended Complaint. Defendants specifically deny that the reduction and/or termination of any of the welfare benefits at issue here was unlawful.

Defendants deny any allegations of the Second Amended Complaint not specifically admitted in the foregoing paragraphs.

FIRST CLAIM FOR RELIEF

RESTORATION OF BENEFITS
PURSUANT TO ERISA 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B)

104. Defendants incorporate by reference the foregoing responses to the numbered allegations of the Second Amended Complaint as if fully repeated herein.

105. Defendants admit that Plaintiffs purport to bring their First Claim for Relief on behalf of all Class members against the Defendants listed in Paragraph 105 of the Second Amended Complaint. Defendants deny the remaining allegations of Paragraph 105 of the Second Amended Complaint.

106. The allegations contained in Paragraph 106 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny these allegations to the extent that they are inconsistent with the statute or do not describe the statute in its entirety.

107. Defendants deny the allegations of Paragraph 107 of the Second Amended Complaint.

108. Defendants deny the allegations of Paragraph 108 of the Second Amended Complaint.

109. Defendants deny the allegations of Paragraph 109 of the Second Amended Complaint. Defendants specifically deny that Plaintiffs are entitled to the relief described in Paragraph 109 of the Second Amended Complaint.

SECOND CLAIM FOR RELIEF

**VIOLATION OF DUTY TO PROVIDE CLEAR AND ACCURATE
PLAN SUMMARIES AND BREACH OF FIDUCIARY DUTY
PURSUANT TO ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3)**

110. Defendants incorporate by reference the foregoing responses to the numbered allegations of the Second Amended Complaint as if fully repeated herein.

111. Defendants admit that Plaintiffs purport to bring their Second Claim for Relief on behalf of all Class members against the Defendants listed in Paragraph 111 of the Second Amended Complaint. Defendants deny the remaining allegations of Paragraph 111 of the Second Amended Complaint.

112. The allegations contained in Paragraph 112 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny these allegations to the extent that they are inconsistent with the statute or do not describe the statute in its entirety.

113. The allegations contained in Paragraph 113 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny these allegations to the extent they are inconsistent with the statute and/or regulation or do not describe the statute and/or regulation in their entirety.

114. The allegations contained in Paragraph 114 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny these allegations to the extent that they are inconsistent with the statute or do not describe the statute in its entirety.

115. Defendants deny the allegations of Paragraph 115 of the Second Amended Complaint.

116. Defendants deny the allegations of Paragraph 116 of the Second Amended Complaint.

117. Defendants deny the allegations of Paragraph 117 of the Second Amended Complaint.

118. Defendants deny the allegations of Paragraph 118 of the Second Amended Complaint.

119. Defendants deny the allegations of Paragraph 119 of the Second Amended Complaint.

120. Defendants deny the allegations of Paragraph 120 of the Second Amended Complaint.

121. Defendants deny the allegations of Paragraph 121 of the Second Amended Complaint. Defendants specifically deny that Plaintiffs are entitled to any of the relief described in Paragraph 121 of the Second Amended Complaint.

THIRD CLAIM FOR RELIEF

**DECLARATORY RELIEF PURSUANT TO
28 U.S.C. § 2201 AND ERISA 502(a)(1)(B) and (3), 29 U.S.C. § 1132(a)(1)(B) and (3)**

122. Defendants incorporate by reference the foregoing responses to the numbered allegations of the Second Amended Complaint as if fully repeated herein.

123. Defendants admit that Plaintiffs purport to bring their Third Claim for Relief on behalf of all Class members against the Defendants listed in Paragraph 123 of the Second Amended Complaint. Defendants deny the remaining allegations of Paragraph 123 of the Second Amended Complaint.

124. Defendants admit that Plaintiffs purport to bring their Third Claim for Relief under the statutory provisions listed in Paragraph 124 of the Second Amended Complaint.

Plaintiffs' claim for declaratory relief under ERISA Section 502(a)(3) has been dismissed with prejudice.

125. The allegations of Paragraph 125 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 125 of the Second Amended Complaint.

126. Defendants deny the allegations of Paragraph 126 of the Second Amended Complaint. Defendants specifically deny that Plaintiffs are entitled to any of the relief described in Paragraph 126 of the Second Amended Complaint. Plaintiffs' claim for declaratory relief under ERISA Section 502(a)(3) has been dismissed with prejudice.

FOURTH CLAIM FOR RELIEF

AGE DISCRIMINATION IN VIOLATION OF 29 U.S.C. 623(a)

127. Defendants incorporate by reference the foregoing responses to the numbered allegations of the Second Amended Complaint as if fully repeated herein.

128. Defendants deny the allegations of Paragraph 128 of the Second Amended Complaint. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

129. Defendants admit that Plaintiffs Fulghum, Dorman, Daniel, Joyner, Barnes, Games, Bullock, and Hollingsworth purport to bring their Fourth Claim for Relief pursuant to the class, collective action provisions of the ADEA, 29 U.S.C. §626(b) against the Defendants listed in Paragraph 129 of the Second Amended Complaint. Defendants deny the remaining allegations of Paragraph 129 of the Second Amended Complaint.

130. Defendants admit that the Individual Age Discrimination Plaintiffs purport to bring this Claim for Relief individually on their own behalf and by their pleading. Defendants

are without knowledge or information sufficient to form a belief as to truth of the remaining allegations of Paragraph 130 of the Second Amended Complaint and, therefore, deny these allegations.

131. The allegations contained in Paragraph 131 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 131 of the Second Amended Complaint.

132. The allegations contained in the first sentence of Paragraph 132 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations contained in the first sentence of Paragraph 132 of the Second Amended Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 132 of the Second Amended Complaint and, therefore, Defendants deny these allegations.

133. Defendants admit that Plaintiffs Fulghum, Dorman, Daniel, Joyner, and Hollingsworth purport to bring this Claim for Relief as an opt-in, collective action pursuant to the ADEA, on behalf of the class described in Paragraph 133 of the Second Amended Complaint.

134. Defendants deny the allegations of Paragraph 134 of the Second Amended Complaint. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

135. The allegations contained in Paragraph 135 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny

these allegations to the extent that they are inconsistent with the regulation or do not describe the regulation in its entirety.

136. Defendants deny the allegations contained in Paragraph 136 of the Second Amended Complaint. The District Court rejected these allegations in dismissing with prejudice Plaintiffs' ADEA claims regarding medical and prescription drug benefits.

137. The allegations contained in Paragraph 137 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 137 of the Second Amended Complaint.

138. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 138 of the Second Amended Complaint and, therefore, Defendants deny these allegations.

139. The allegations of Paragraph 139 of the Second Amended Complaint and its subparagraphs constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations of Paragraph 139 of the Second Amended Complaint and its subparagraphs. Plaintiffs' ADEA claims, as described in Paragraph 139(a) and 139(b), have been dismissed with prejudice.

140. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 140 of the Second Amended Complaint and, therefore, Defendants deny these allegations. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

141. Defendants admit that the Individual Age Discrimination Plaintiffs purport to assert their right to individualized relief in the event their ADEA claims cannot proceed as a

collective action. Defendants deny that the Individual Age Discrimination Plaintiffs have any right to relief for their ADEA claims. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

142. Defendants admit that Plaintiffs request that the Court establish notification and filing procedures to create an opt-in class under 29 U.S.C. § 216(b).

143. Defendants deny the allegations contained in Paragraph 143 of the Second Amended Complaint. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

144. Defendants deny the allegations contained in Paragraph 144 of the Second Amended Complaint. Defendants specifically deny that Plaintiffs, the Individual Age Discrimination Plaintiffs, and the purported members of the ADEA Class are entitled to any of the relief described in Paragraph 144 of the Second Amended Complaint. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

145. Defendants deny the allegations contained in Paragraph 145 of the Second Amended Complaint. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

146. Defendants deny the allegations contained in Paragraph 146 of the Second Amended Complaint. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

147. Defendants admit that Plaintiffs purport to seek a jury trial on their ADEA claims. Plaintiffs' ADEA claims regarding medical and prescription drug benefits have been dismissed with prejudice.

FIFTH CLAIM FOR RELIEF

AGE DISCRIMINATION IN VIOLATION OF OHIO CIVIL RIGHTS ACT

148. Defendants incorporate by reference the foregoing responses to the numbered allegations of the Second Amended Complaint as if fully repeated herein.

149. Defendants admit that Plaintiffs purport to bring this Claim for Relief on behalf of all members of the Ohio Age Claim Sub-Class against Embarq.

150. The allegations contained in Paragraph 150 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny the allegations contained in the first sentence of Paragraph 150 to the extent that they are inconsistent with the statute or do not describe the statute in its entirety. To the extent that a response is required to the remaining allegations of Paragraph 150 of the Second Amended Complaint, Defendants deny these allegations.

151. Defendants deny the allegations contained in the second sentence of Paragraph 151 of the Second Amended Complaint. The remaining allegations contained in Paragraph 151 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny the allegations to the extent that they are inconsistent with the statute or do not describe the statute in its entirety.

152. Defendants admit that Plaintiffs K. Carpenter and B. Carpenter purport to have elected a judicial remedy under Ohio Revised Code § 4112.02(N). Defendants deny the remaining allegations of Paragraph 152 of the Second Amended Complaint.

153. The allegations contained in the first sentence of Paragraph 153 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that a response is required, Defendants deny these allegations. Defendants admit

that Plaintiffs K. Carpenter and B. Carpenter purport to seek the relief described in Paragraph 153 of the Second Amended Complaint. Defendants deny that Plaintiffs are entitled to any of the relief described in Paragraph 153 of the Second Amended Complaint.

154. Defendants admit that Plaintiffs purport to seek a jury trial on the claims brought under the Ohio Civil Rights Act.

SIXTH CLAIM FOR RELIEF

**AGE DISCRIMINATION IN VIOLATION OF
OREGON UNLAWFUL DISCRIMINATION LAW**

155. Defendants incorporate by reference the foregoing responses to the numbered allegations of the Second Amended Complaint as if fully repeated herein.

156. Defendants admit that Plaintiffs Somdahl and Dugger purport to bring this Claim for Relief on behalf of all members of the Oregon Age Claim Sub-Class against Defendant Embarq.

157. The allegations contained in Paragraph 150 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny the allegations contained in the first sentence of Paragraph 157 to the extent that they are inconsistent with the statute or do not describe the statute in its entirety. To the extent that a response is required to the remaining allegations of Paragraph 157 of the Second Amended Complaint, Defendants deny these allegations.

158. The allegations contained in the first sentence in Paragraph 158 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny these allegations to the extent they are inconsistent with the statute or do not describe the statute in its entirety. Defendants deny the allegations contained in the second sentence of Paragraph 158 of the Second Amended Complaint.

159. Defendants admit that Plaintiffs Somdahl and Dugger purport to have elected a judicial remedy under O.R.S. § 659A.885. Defendants deny the remaining allegations of Paragraph 159 of the Second Amended Complaint.

160. The allegations contained in the first sentence of Paragraph 160 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny the allegations to the extent that they are inconsistent with the statute or do not describe the statute in its entirety. Defendants admit that Plaintiffs Somdahl and Dugger and the members of the Oregon Age Claim Sub-Class purport to seek the relief described in Paragraph 160 of the Second Amended Complaint. Defendants deny that Plaintiffs are entitled to any of the relief described in Paragraph 160 of the Second Amended Complaint.

161. Defendants admit that Plaintiffs purport to seek a jury trial on their claims under the Oregon Unlawful Discrimination Law.

SEVENTH CLAIM FOR RELIEF

AGE DISCRIMINATION IN VIOLATION OF TENNESSEE CIVIL RIGHTS ACT

162. Defendants incorporate by reference the foregoing responses to the numbered allegations of the Second Amended Complaint as if fully repeated herein.

163. Defendants admit that Plaintiffs purport to bring this Claim for Relief on behalf of all members of the Tennessee Age Claim Sub-Class against Defendant Embarq.

164. The allegations contained in Paragraph 164 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny the allegations contained in the first sentence of Paragraph 164 of the Second Amended Complaint to the extent that they are inconsistent with the statute or do not describe the statute in its entirety. To the extent that a response is required to the allegations contained in the second

sentence of Paragraph 164 of the Second Amended Complaint, Defendants deny these allegations.

165. The allegations in the first sentence of Paragraph 165 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny these allegations to the extent they are inconsistent with the statute or do not describe the statute in its entirety. Defendants deny the allegations contained in the second sentence of Paragraph 165 of the Second Amended Complaint.

166. Defendants admit that Plaintiffs purport that Plaintiff Sams elected a judicial remedy under Tennessee Stat. § 4-21-311(d). The allegations of the second sentence of Paragraph 166 of the Second Amended Complaint constitute conclusions of law to which no responsive pleading is required. Defendants deny these allegations to the extent they are inconsistent with the statute or do not describe the statute in its entirety. Defendants admit that Plaintiffs purport that Plaintiff Sams and the members of the Tennessee Age Claim Sub-Class seek the relief described in Paragraph 166 of the Second Amended Complaint. Defendants deny that Plaintiff Sams and the members of the Tennessee Age Claim Sub-Class are entitled to any of the relief described in Paragraph 166 of the Second Amended Complaint.

167. Defendants admit that Plaintiffs purport to seek a jury trial on their claims under the Tennessee Civil Rights Act.

PRAYER FOR RELIEF

Defendants deny that Plaintiffs and the purported members of the putative Class and Sub-Class are entitled to any of the relief they seek in Paragraphs 1 through 15 of their Prayer for Relief.

DEFENSES

1. There is no right to a jury trial, compensatory damages, or punitive damages under ERISA.
2. Plaintiffs' claims are time-barred to the extent they relate to events that occurred beyond the applicable statutes of limitations.
3. The conduct upon which Plaintiffs' claims are based was not fiduciary conduct.
4. Plaintiffs' claims are barred in whole, or in part, against each Defendant to the extent such Defendant was not a fiduciary with respect to the applicable plan.
5. Defendants' actions with regard to Plaintiffs' medical, prescription drug, and life insurance benefits were based on reasonable factors other than age.
6. Plaintiffs' ADEA claims are barred in whole, or in part, by 29 U.S.C. § 1625.10 et seq.
7. Plaintiffs' claims are barred in whole, or in part, by their failure to mitigate any harm that they claim to have suffered.
8. ERISA preempts Plaintiffs' state law claims to the extent that the statutes upon which Plaintiffs rely prohibit conduct that is permissible under the ADEA.
9. Plaintiffs' state law claims are barred in whole, or in part, to the extent that Plaintiffs failed to comply with the statutory or jurisdictional prerequisites for the institution of actions under the statutes upon which they rely.
10. Plaintiffs' state law claims are barred in whole, or in part, to the extent that the state laws upon which Plaintiffs rely adopt the regulations promulgated by the EEOC.

11. To the extent that Plaintiffs or any member of the classes or sub-classes described in the Second Amended Complaint have signed releases, their claims are barred in whole, or in part, by these releases.

12. Defendants' actions have been justified by and are consistent with the terms of the applicable plan documents, ERISA and other federal, state and common law.

RESERVATION OF RIGHTS

Defendants reserve the right to assert any additional defenses that may appear and become applicable during the course of this litigation.

WHEREFORE, Defendants respectfully request that this Court enter judgment in their favor on Plaintiffs' claims, that the Second Amended Complaint be dismissed with prejudice, and that Defendants be awarded their costs and fees.

STINSON MORRISON HECKER LLP

Dated: January 9, 2009

By Scott C. Hecht
Mark D. Hinderks KS #11293
12 Corporate Woods
10975 Benson, Suite 550
Overland Park, KS 66210
(913) 451-8600 (Telephone)
(913) 451-6352 (Facsimile)
mhinderks@stinson.com

Scott C. Hecht KS #16492
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106
(816) 842-8600 (Telephone)
(816) 691-3495 (Facsimile)
shecht@stinson.com

and

Michael L. Banks (*pro hac vice*)
Joseph J. Costello (*pro hac vice*)
MORGAN, LEWIS & BOCKIUS
LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5387/5295 (Telephone)
(215) 963-5001 (Facsimile)
mbanks@morganlewis.com
jcostello@morganlewis.com

James P. Walsh, Jr. (*pro hac vice*)
MORGAN, LEWIS & BOCKIUS
LLP
502 Carnegie Center
Princeton, NJ 08540
(609) 919-6647 (Telephone)
(609) 919-6701 (Facsimile)
jwalsh@morganlewis.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2009, I electronically filed the foregoing document using the CM/ECF system, which will send notice of electronic filing to the following:

THE NYGAARD LAW FIRM

Diane A. Nygaard
Jason M. Kueser
4501 College Boulevard, Suite 260
Leawood, Kansas 66211
Telephone: (913) 469-5544
Facsimile: (913) 469-1561
diane@nygaardlaw.com

SANDALS & ASSOCIATES, P.C.

Alan M. Sandals
Scott M. Lempert
One South Broad Street, Suite 1850
Philadelphia, PA 19107
Telephone: (215) 825-4000
Facsimile: (215) 825-4001
asandals@sandalslaw.com

GLENN, MILLS & FISHER, P.A.

Stewart W. Fisher
Post Office Drawer 3865
Durham, NC 27702
Telephone: (919) 683-2135
Facsimile: (919) 688-9339
sfisher@gmf-law.com

LAW OFFICE OF RICHARD T. SEYMOUR, PLLC

Richard T. Seymour
Adele Rapport
1150 Connecticut Avenue, NW
Suite 900
Washington, DC 20036
Telephone: (202) 862-4320
Facsimile: (800) 805-1065
rick@rickseymourlaw.com

Attorneys for Plaintiffs

Scott C. Hecht

Attorneys for Defendants