

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

WILLIAM DOUGLAS FULGHUM,
DORSEY DANIEL, JOHN DOUGLAS
HOLLINGSWORTH, WILLIE DORMAN,
ROBERT E. KING, CALVIN BRUCE JOYNER,
TIMOTHY DILLON, SUE BARNES,
WILLIAM GAMES, and BETSY BULLOCK,
Individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

EMBARQ CORPORATION, EMBARQ
RETIREE MEDICAL PLAN,
COMPENSATION COMMITTEE OF
THE BOARD OF DIRECTORS
OF EMBARQ CORPORATION
AS PLAN ADMINISTRATOR OF THE
EMBARQ RETIREE MEDICAL PLAN,
SPRINT NEXTEL CORPORATION,
EMBARQ MID-ATLANTIC MANAGEMENT
SERVICES COMPANY f/k/a SPRINT
MID-ATLANTIC TELECOM, INC., 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 PLANS, CAROLINA
TELEPHONE AND TELEGRAPH COMPANY,
LLC f/k/a CAROLINA TELEPHONE AND
TELEGRAPH COMPANY, GROUP LIFE,
ACCIDENTAL DEATH AND
DISMEMBERMENT AND DEPENDENT
LIFE PLAN FOR EMPLOYEES OF
CAROLINA TELEPHONE AND
TELEGRAPH COMPANY, CAROLINA
TELEPHONE AND TELEGRAPH

CIVIL ACTION

CASE NO. 07-CV-2602 KHV/JPO

COMPLAINT – CLASS ACTION

COMPANY VOLUNTARY)
EMPLOYEES' BENEFICIARY ASSOCIATION)
SICKNESS DEATH BENEFIT PLAN, and)
RANDALL T. PARKER AS)
PLAN ADMINISTRATOR FOR ALL OF THE)
EMPLOYEE WELFARE BENEFIT PLANS)
OF EMBARQ CORPORATION AND)
CAROLINA TELEPHONE AND)
TELEGRAPH COMPANY, LLC,)
))
Defendants.)
_____)

INTRODUCTION

1. This is an action for declaratory, injunctive, and other equitable relief, as well as damages and other monetary relief, to redress the deprivation of rights secured to Plaintiffs and the members of the Class and Sub-Class by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. (“ERISA”).

2. Plaintiffs and the members of the Class and Sub-Class are retired employees of various national, regional and local telecommunications operating and supply companies, including Defendant Carolina Telephone and Telegraph Company, which are now wholly-owned subsidiaries of Defendant Embarq Corporation.

3. Plaintiffs seek relief for the following unlawful actions of Defendants:

(a) the elimination of company-sponsored and company-paid medical and prescription drug coverage and coverage subsidies provided to Medicare-eligible retirees and their Medicare-eligible dependents; and

(b) the elimination of company-sponsored and company-paid life insurance coverage provided to retirees and their dependents, including such coverage provided to retirees of Carolina Telephone and Telegraph Company who are participants in the Carolina Telephone

and Telegraph Company Voluntary Employees Beneficiary Association Plan (“VEBA”), also known as the Sickness Death Benefit Plan.

JURISDICTION

4. The jurisdiction of this Court is invoked pursuant to ERISA, 29 U.S.C. §§ 1132(a)(1) and (3) and 1132(e), the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the general federal question jurisdictional statute, 28 U.S.C. § 1331.

5. Before filing this action, Plaintiffs Dorsey Daniel, Doug Hollingsworth, Willie Dorman, and Calvin Bruce Joyner filed Charges of Discrimination based upon age with the Equal Employment Opportunity Commission (EEOC). The time within which the EEOC will issue Notices of Right to Sue to these Plaintiffs has not yet elapsed. Upon receipt of their Notices of Right to Sue, Plaintiffs will amend the Complaint to assert claims under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 626(b), and to demand jury trial of all such claims triable by jury.

6. Before filing this action, certain Plaintiffs and other Class members notified Defendant Randall T. Parker, the Director of Benefits and Plan Administrator of the relevant benefits plans of Embarq Corporation and Carolina Telephone and Telegraph, that they were demanding that their medical, prescription drug and life insurance benefits be restored to them. Mr. Parker and Defendants have failed to restore any of these benefits to Plaintiffs or to any other Class member.

7. Plaintiffs have exhausted any administrative remedies that may be required under ERISA, to the extent any such remedies are available under the terms of the ERISA benefit plans

at issue in this case. In the alternative, any attempt to exhaust administrative remedies is not required by law or would be futile for the following reasons:

(a) no administrative remedy is required under the applicable laws, and specifically no administrative remedy is required for Plaintiffs to bring their ERISA claims for breach of fiduciary duty;

(b) due to the actions of Defendant Embarq Corporation challenged in this action, the relevant plans no longer provide these benefits, and any claim made to the plans for such benefits by any Plaintiff or member of the Class would be futile, inasmuch as the Plan Administrators would have no authority to grant these benefits. Indeed, when Defendant Embarq announced the challenged benefits cutbacks to Plaintiffs and the members of the Class in July 2007, it did not advise them that any plan-related review procedure was available to them, nor did it otherwise indicate that any form of administrative exhaustion was required. The remedies sought by Plaintiffs and the members of the Class and required by law therefore cannot be provided by the Plan Administrators because they require actions to amend the plans by the Plan Sponsors, including but not limited to Defendant Embarq Corporation;

(c) the cutback of medical, prescription drug and life insurance benefits was planned and purposely executed at the highest executive levels of the defendant corporations, including but not limited to Defendant Embarq Corporation, such that the Plan Administrators cannot provide any of the remedies sought by Plaintiffs and the members of the Class through the administrative processes provided by the subject plans; and

(d) the delay of this litigation by fruitless administrative proceedings would further damage and injure Plaintiffs and the members of the Class, many of whom are elderly retirees who need their medical, prescription drug, and life insurance benefits. Plaintiffs and the

members of the Class would be prejudiced by the continued denial of those benefits and any further delay in the resolution of this case by administrative proceedings.

VENUE

8. Venue lies in this District under ERISA § 502(e)(2), 29 U.S.C. § 1332(e)(2), and/or under 28 § 1391(b) or (c), because Defendants reside or may be found in this District, the welfare benefit plans at issue were administered in part in this District, the breaches and/or unlawful acts took place in this District, numerous Class members reside within this District, and a substantial part of the events giving rise to the claims occurred in this District.

PARTIES

PLAINTIFFS

9. Plaintiff William Douglas Fulghum is a resident of Fayetteville, North Carolina. Mr. Fulghum was employed by Carolina Telephone and Telegraph Company and other predecessor corporations to Defendant Embarq Corporation. He is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Mr. Fulghum was born in 1938, began working for defendant corporations on or about June 1956, and retired on or about September 1, 1996 at the age of 58. He is currently 69 years old.

10. Plaintiff Dorsey Daniel is a resident of Tarboro, North Carolina. Mr. Daniel was employed by Carolina Telephone and Telegraph Company and other predecessor corporations to Defendant Embarq Corporation. He is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Mr. Daniel was born in 1940, began working for

defendant corporations on or about July 1965, and retired on or about June 1, 1999 at the age of 58. He is currently 67 years old.

11. Plaintiff John Douglas Hollingsworth is a resident of Fayetteville, North Carolina. Mr. Hollingsworth was employed by Carolina Telephone and Telegraph Company and other predecessor corporations to Defendant Embarq Corporation. He is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Mr. Hollingsworth was born in 1944, began working for defendant corporations on or about June 1964, and retired on or about December 30, 2001 at the age of 57. He is currently 63 years old.

12. Plaintiff Willie Dorman is a resident of Erwin, North Carolina. Mr. Dorman was employed by Carolina Telephone and Telegraph Company and other predecessor corporations to Defendant Embarq Corporation. He is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Mr. Dorman was born in 1938, began working for defendant corporations on or about April 1959, and retired on or about March 1, 1994 at the age of 56. He is currently 69 years old.

13. Plaintiff Robert E. King is a resident of Ocala, Florida. Mr. King was employed by United Telecom of Florida, Sprint of Florida, and other predecessor corporations to Defendant Embarq Corporation. He is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Mr. King was born in 1930, began working for defendant corporations on or about April 1959, and retired on or about September 1, 1993 at the age of 63. He is currently 77 years old.

14. Plaintiff Calvin Bruce Joyner is a resident of Tarboro, North Carolina. Mr. Joyner was employed by Carolina Telephone and Telegraph Company and other predecessor corporations to Defendant Embarq Corporation. He is a participant in the ERISA plans at issue

in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Mr. Joyner was born in 1938, began working for defendant corporations on or about June 25, 1956, and retired on or about March 1, 1994 at the age of 56. He is currently 69 years old.

15. Plaintiff Timothy Dillon is a resident of Niceville, Florida. Mr. Dillon was employed by Florida Telephone Company, North Supply Company and other predecessor corporations to Defendant Embarq Corporation. He is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Mr. Dillon was born in 1943, began working for defendant corporations on or about May 1969, and retired on or about December 2002 at the age of 59. He is currently 64 years old.

16. Plaintiff Sue Barnes is a resident of Wilson, North Carolina. Ms. Barnes was employed by Carolina Telephone and Telegraph Company and other predecessor corporations to Defendant Embarq Corporation. She is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Ms. Barnes was born in 1941, began working for defendant corporations on or about September, 1959, and retired on or about March, 2003 at the age of 61. She is currently 66 years old.

17. Plaintiff William Games is a resident of Camden, North Carolina. Mr. Games was employed by Carolina Telephone and Telegraph Company and other predecessor corporations to Defendant Embarq Corporation. He is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Mr. Games was born in 1940, began working for defendant corporations on or about October, 1959, and retired on or about December 31, 2001 at the age of 61. He is currently 67 years old.

18. Plaintiff Betsy Bullock is a resident of Tarboro, North Carolina. Ms. Bullock was employed by Carolina Telephone and Telegraph Company and other predecessor corporations to

Defendant Embarq Corporation. She is a participant in the ERISA plans at issue in this lawsuit within the meaning of 29 U.S.C. § 1002(7). Ms. Bullock was born in 1943, began working for defendant corporations on or about August, 1971, and retired on or about December 31, 2001 at the age of 58. She is currently 64 years old.

DEFENDANTS

19. Upon information and belief, Defendant Embarq Corporation (“Embarq”) is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Overland Park, Kansas and may be properly served with process through its Kansas Registered Agent, c/o Corporation Service Company, 200 S.W. 30th Street, Topeka, KS 66611. Upon information and belief, Embarq was created as a spin-off of the local telecommunications carriers owned by Defendant Sprint Nextel on May 17, 2006. Embarq is now the fourth largest local exchange telephone carrier in the United States with more than \$6 billion in annual revenues. Embarq is publicly traded on the New York Stock Exchange under the ticker symbol “EQ.” Embarq has approximately 20,000 active employees and approximately 14,000 retirees.

20. Plaintiffs are considered to be retirees of Embarq. In connection with the spin-off of Embarq, Sprint Nextel purported to assign to Embarq its duties to perform its benefits obligations to provide to Plaintiffs and the members of the Class the subject retiree medical, prescription drug, and life insurance benefits. These obligations were assumed by Embarq upon its creation. However, Plaintiffs and the members of the Class did not consent to this assignment of the benefits obligations and Sprint-Nextel remains liable to provide these benefits.

21. On or about July 26, 2007, Embarq informed Plaintiffs and the members of the Class that it was unilaterally terminating or reducing their company-paid medical, prescription drug, and life insurance benefits and/or subsidies. The termination of life insurance benefits that

were provided to participants in Defendant Carolina Telephone & Telegraph Company Voluntary Employee Beneficiary Association, including Plaintiffs Fulghum, Daniel, Hollingsworth, Dorman, Joyner, Barnes, Games and Bullock, became effective on September 1, 2007. The termination of medical and prescription drug benefits and subsidies, and the reduction of the amount of life insurance benefits provided to all other Plaintiffs and retirees, will become effective on January 1, 2008.

22. On the same day it announced its terminations and reductions of retiree benefits, Embarq reported to shareholders that these terminations and reductions would reduce Embarq's post-retirement benefits expense by \$20 million during the second half of 2007, would result in annual cash savings to Embarq of approximately \$40 million per year beginning in 2008, and would reduce its long-term postretirement benefits obligations by \$301 million.

23. Upon information and belief, at all times pertinent to this lawsuit, Defendant Embarq and its predecessors in interest were the Plan Sponsors of the retiree benefit plans at issue in this lawsuit within the meaning of ERISA § 3(16), 29 U.S.C. § 1002(16)(a) & (b), and were fiduciaries of those plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that they exercised discretionary authority or control respecting the management of the plans, exercised authority and control respecting management or disposition of the plans' assets, and/or had discretionary authority or responsibility in the administration of the plans.

24. Employees and agents of Defendant Embarq and its predecessors in interest, including Defendant Randall T. Parker, acting in a fiduciary capacity, explained the company's retiree benefits and made numerous promises and representations to Plaintiffs and the members of the Class regarding their lifetime rights to post-retirement benefits from the plans at issue in this Complaint. Such statements were within the course and scope of the employment and

fiduciary agency of these Embarq employees and agents. As hereinafter alleged, if the benefits were not in fact secure from reduction or termination during retirement, then Defendant Embarq and its predecessors in interest systematically misrepresented these benefits to Plaintiffs and the members of the Class, either by affirmative misrepresentations of material information about the benefits and/or by misleading failures to disclose material information about the benefits.

25. Defendant Embarq Retiree Medical Plan is an employee welfare benefit plan within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), and is established and maintained by Defendant Embarq for the purpose of providing subsidized retiree medical and prescription drug benefits to former employees of Embarq and its predecessors who meet certain age and service requirements, and similar benefits to their eligible spouses and dependents.

26. Upon information and belief, Defendant Embarq Retiree Medical Plan is an entity which may be sued pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d), and may be properly served with process by serving Randall T. Parker, Plan Administrator, Mail Stop KSOPK 10201-2067, 5454 West 110th Street, Overland Park, KS 66211.

27. Defendant Board of Directors of Embarq Corporation is sued herein in its capacity as named Plan Administrator of Defendant Embarq Retiree Medical Plan. It is an entity named in Defendant Embarq Retiree Medical Plan as one which may be sued pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). It may be properly served with process by serving Randall T. Parker, Plan Administrator, Mail Stop KSOPK 10201-2067, 5454 West 110th Street, Overland Park, KS 66211.

28. Defendant Sprint Nextel Corporation (“Sprint Nextel”) is a corporation incorporated under the laws of the State of Kansas, with its principal places of business in Overland Park, Kansas and Reston, Virginia. It may be properly served with process through its

Kansas Registered Agent, c/o Corporation Service Company, 200 S.W. 30th Street, Topeka, KS 66611. Upon information and belief, Defendant Sprint Nextel was formerly known as United Utilities, Incorporated, then as United Telecommunications, Inc., and then as Sprint Corporation, before becoming Sprint Nextel Corporation. Upon information and belief, Defendant Sprint Nextel is one of the largest telecommunications companies in the United States with more than \$43.6 billion in annual revenues.

29. Upon information and belief, during some or all of the times pertinent to this lawsuit, Defendant Sprint Nextel and its predecessors in interest were the Plan Administrators and Plan Sponsors of the plans covered by this Complaint within the meaning of ERISA § 3(16), 29 U.S.C. § 102(16)(A) and (B), and were fiduciaries of the plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that they exercised discretionary authority or control respecting the management of the plans, exercised authority or control respecting management or disposition of the plans' assets, and/or had discretionary authority or responsibility in the administration of the plans.

30. Upon information and belief, Defendant Sprint Nextel has a history of age discrimination. In May, 2006, Sprint Nextel agreed to pay \$5.5 million to settle a class action lawsuit filed in the Northern District of Georgia for a group of 462 former employees who alleged that they were targeted for layoffs in 2003 and 2004 because they were older workers. On May 19, 2007, Sprint Nextel agreed to pay \$57 million to settle a class action lawsuit filed in U.S. District Court in Kansas for a group of 1,697 former employees who alleged that they were targeted for layoffs between October 1, 2001 and March 31, 2003 because they were older workers.

31. Upon information and belief, Plaintiffs and the members of the Class were participants in the retiree benefit plans of Defendant Sprint Nextel, but many of the assets and obligations of those plans have now been assigned and transferred without their consent to Defendant Embarq and its various retiree benefit plans.

32. Employees and agents of Defendant Sprint Nextel and its predecessors in interest, including Defendant Randall T. Parker, acting in a fiduciary capacity, explained the company's retiree benefits and made numerous promises and representations to Plaintiffs and the members of the Class regarding their lifetime rights to post-retirement benefits from the plans at issue in this Complaint. Such statements were within the course and scope of the employment and fiduciary agency of these Sprint Nextel employees and agents. As hereinafter alleged, if the benefits were not in fact secure from reduction or termination during retirement, then Defendant Sprint Nextel and its predecessors in interest systematically misrepresented these benefits to Plaintiffs and the members of the Class, either by affirmative misrepresentations of material information about the benefits and/or by misleading failures to disclose material information about the benefits.

33. Upon information and belief, Defendant Embarq Mid-Atlantic Management Services Company ("Embarq Mid-Atlantic") is a North Carolina corporation that was previously known as Sprint Mid-Atlantic Telecom, Inc., with its principal place of business in Wake Forest, North Carolina and may be properly served with process through its North Carolina Registered Agent, c/o Corporation Service Company, 327 Hillsborough Street, Raleigh, NC 27601. Upon information and belief, Defendant Embarq Mid-Atlantic is a wholly-owned subsidiary of Defendant Embarq.

34. Upon information and belief, during some or all of the pertinent times, Defendant Embarq Mid-Atlantic was a Plan Administrator and Plan Sponsor of certain of the plans covered by this Complaint within the meaning of ERISA § 3(16), 29 U.S.C. § 102(16)(A) and (B), and was a fiduciary of those plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that it exercised discretionary authority or control respecting the management of the plans, exercised authority or control respecting management or disposition of the plans' assets, and/or had discretionary authority or responsibility in the administration of the plans.

35. Upon information and belief, Defendant Sprint Retiree Medical Plan, Defendant Group Health Plan for Certain Retirees and Employees of Sprint Corporation, Defendant Sprint Welfare Benefit Plan for Retirees and Non-Flexcare Participants, and Defendant Sprint Group Life and Long Term Disability Plan are each employee welfare benefit plans within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), established and maintained by Defendant Sprint Nextel and its predecessors in interest for the purpose of providing subsidized retiree medical, prescription drug and life insurance benefits to former employees who meet certain age and service requirements, and to their eligible dependents and spouses.

36. Upon information and belief, each of these plans is an entity which may be sued pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d), and may be properly served through Defendant Sprint Nextel's corporate office in Overland Park, Kansas. Each of these defendant plans remains liable to perform the benefit obligations that Sprint Nextel assigned to Embarq.

37. Upon information and belief, Defendant Carolina Telephone and Telegraph Company LLC ("CT&T") is a North Carolina corporation with its principal place of business in Wake Forest, North Carolina. Upon information and belief, CT&T was formerly known as Carolina Telephone and Telegraph Company and was a wholly-owned subsidiary of Defendant

Sprint Nextel. Currently, it is a wholly owned subsidiary of Defendant Embarq. Defendant CT&T may be served with process through its North Carolina Registered Agent, c/o Corporation Service Company, 327 Hillsborough Street, Raleigh, NC 27601.

38. Upon information and belief, during some or all of the times pertinent to this lawsuit, Defendant CT&T and its predecessors in interest were Plan Administrators and plan sponsors of certain of the plans covered by this Complaint within the meaning of ERISA § 3(16), 29 U.S.C. § 102(16)(A) and (B), and were fiduciaries of the plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that they exercised discretionary authority or control respecting the management of the plans, exercised authority or control respecting management or disposition of the plans' assets, and/or had discretionary authority or responsibility in the administration of the plans. Employees and agents of Defendant CT&T and its predecessors in interest, including Defendant Randall T. Parker, acting in a fiduciary capacity to explain the company's retiree benefits, made numerous promises and representations to Plaintiffs and the members of the Class regarding their lifetime rights to post-retirement benefits from the plans at issue in this Complaint. Such statements were within the course and scope of the employment and fiduciary agency of these CT&T employees and agents. As hereinafter alleged, if the benefits were not in fact secure from reduction or termination during retirement, then Defendant CT&T and its predecessors in interest systematically misrepresented the benefits to Plaintiffs and the members of the Class, either by affirmative misrepresentations of material information about the benefits and/or by misleading failures to disclose material information about the benefits.

39. Defendant 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 § 3(1), 29 U.S.C. § 1002(1), established and

maintained by Defendant CT&T and its predecessors and successors, for the purpose of providing subsidized retiree medical, prescription drug and life insurance benefits to former employees who meet certain age and service requirements, and to their eligible spouses and dependents. Upon information and belief, this plan is a legal entity which may be sued pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d), and may be properly served with process by serving the Plan Administrator, Randall T. Parker, at Carolina Telephone and Telegraph Company, 5454 West 110th Street - 208, Overland Park, KS 66211.

40. Upon Information and belief, Defendant Carolina Telephone and Telegraph Company Voluntary Employees' Beneficiary Association Sickness Death Benefit Plan ("VEBA") is an employee welfare benefit plan within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), established and maintained by Defendant CT&T and its predecessors and successors, for the purpose of providing subsidized retiree medical, prescription drug and life insurance benefits to former employees who meet certain age and service requirements, and to their eligible spouses and dependents.

41. Upon information and belief, Defendant VEBA is an entity which may be sued pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d), and may be properly served with process by serving the Plan Administrator, Randall T. Parker, at Carolina Telephone and Telegraph Company, 5454 West 110th Street - 208, Overland Park, KS 66211.

42. Upon information and belief, Defendant Randall T. Parker is a resident of Overland Park, Kansas and serves as the Plan Administrator for all of the Defendant plans of Embarq Corporation and Defendant CT&T which are named in this lawsuit. In this capacity, Defendant Parker was a fiduciary of the plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that he exercised discretionary authority or control respecting the management of

the plans, exercised authority or control respecting management or disposition of the plans' assets, and/or had discretionary authority or responsibility in the administration of the plans. Defendant Parker, acting in a fiduciary capacity to explain the retiree benefits provided by the plans, authorized, ratified, or made numerous promises and representations to Plaintiffs and the members of the Class regarding their lifetime rights to post-retirement benefits from the plans at issue in this Complaint. Such statements were within the course and scope of his employment and fiduciary agency with Defendants Embarq and Sprint and their predecessors in interest. As hereinafter alleged, if the benefits were not in fact secure from reduction or termination during retirement, then Defendant Parker systematically misrepresented the benefits to Plaintiffs and the members of the Class, either by affirmative misrepresentations of material information about the benefits and/or by misleading failures to disclose material information about the benefits. Mr. Parker may be served at his address, 5454 W. 110th Street, Overland Park, KS 66211.

CLASS ACTION ALLEGATIONS

43. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class:

All persons, including all plan participants and all eligible spouse and dependent plan beneficiaries, whose rights to medical, prescription drug, and/or life insurance benefits or premium subsidies have been adversely affected by the terminations, reductions and changes in retiree benefits which were announced by Defendant Embarq Corporation on July 26, 2007.

The Class includes a Sub-Class, all the members of which are also members of the Class. The Sub-Class is defined as follows:

All persons, including all plan participants and all eligible spouse and dependent plan beneficiaries, whose rights to medical, prescription drug, and/or life insurance benefits or premium subsidies have been adversely affected by the terminations, reductions and changes in retiree benefits which were announced by

Defendant Embarq Corporation on July 26, 2007, and who were participants or beneficiaries in the Carolina Telephone & Telegraph Voluntary Employee Beneficiary Association (VEBA) as of July 26, 2007.

44. The members of the Class and Sub-Class are so numerous that joinder of all members is impracticable. The exact number of Class members is currently unknown to Plaintiffs. However, the Form 5500 Annual Report for the Sprint Welfare Benefit Plan for Retirees for the year 2004 disclosed that there were 12,975 retired participants in the plan as of January 1, 2004. The exact number of Sub-Class members is currently unknown to Plaintiffs. However, the Form 5500 Annual Report for the VEBA for the year 2005 disclosed that there were 2,569 retired participants who were entitled to future benefits from the plan as of January 1, 2005.

45. Common questions of law or fact exist as to all Class and Sub-Class members and these questions predominate over any questions solely affecting individual members. Among the questions of law or fact common to the Class and Sub-Class are:

(a) whether the members of the Class and Sub-Class have been or will be unlawfully excluded from and deprived of their rights under Defendants' ERISA benefit plans and whether Defendants breached the terms of these plans and breached their strict ERISA fiduciary duties to Plaintiffs and the members of the Class and Sub-Class;

(b) whether Defendants violated ERISA by cutting off Grand-fathered Life Insurance benefits (as described below) to the members of the Sub-Class who have a right to participate in the VEBA; and

(c) whether Plaintiffs and the members of the Class and Sub-Class are entitled to the relief prayed for in this Complaint.

46. Each Plaintiff is a member of the Class and presents claims that are typical of the claims of the members of the Class. In addition, Plaintiffs Fulghum, Daniel, Hollingsworth, Dorman, Joyner, Barnes, Games, and Bullock are members of the Sub-Class. Their claims are also typical of the claims of the members of the Sub-Class.

47. Plaintiffs will fairly and adequately protect the interest of the members of the Class and Sub-Class and have retained counsel who are competent and experienced in class action and employee benefits and employment discrimination litigation.

48. Plaintiffs do not have interests that are antagonistic to, or in conflict with the members of the Class and Sub-Class whom they seek to represent as class representatives.

49. Class certification is appropriate under Rules (23)(b)(1)(B) and (b)(2), Fed. R. Civ. P., because adjudications with the respect to individual Class and Sub-Class members would as a practical matter be dispositive of the interest of other members, and Defendants have acted on grounds generally applicable to the Class and Sub-Class, making appropriate declaratory, injunctive and other equitable relief on a class-wide basis.

50. If necessary, class certification also would be appropriate under Rule 23(b)(3), Fed. R. Civ. P., because common issues of law and fact predominate over any individual issues. In addition, a class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all Class members and Sub-Class is impracticable. This District is an appropriate forum in which to concentrate all litigation relating to the subject retiree benefits. Furthermore, the expense and burden of individual litigation makes it impractical for members of the Class and Sub-Class to pursue individual litigation to vindicate their rights. Plaintiffs are not aware of any problems that would militate against the maintenance of this action as a class action.

51. In the alternative, Plaintiffs plead their cases individually and, if necessary, will amend this Complaint to allow the thousands of other members of the Class and Sub-Class to bring their own claims in an individual capacity.

STATEMENT OF FACTS

52. Most of the retirees who are members of the Class are former long-term management and unionized employees of once independent regional and local telephone companies that are now wholly-owned subsidiaries of Defendant Embarq. Upon information and belief, these telephone companies were located in the states of Kansas, North Carolina, South Carolina, Georgia, Florida, Ohio, Pennsylvania, Indiana, New Jersey, Texas, Virginia, Minnesota, Missouri, New Hampshire, and Oregon.

53. As was true throughout the telecommunications industry during the decades of their dedicated service, the employers of Plaintiffs and the members of the Class attracted and retained them and other employees through their programs of retiree benefits, including the subject medical, prescription drug, and life insurance benefits. In addition, based upon their representations that these benefits were a long-term liability of the companies, the employers secured funding for these benefits through their periodic filings with the various state public utilities commissions which had regulatory authority over their rates and other revenue-producing activities. Throughout their careers, Plaintiffs and the members of the Class accepted lower levels of current compensation secure in their understanding that their work was earning them a valuable program of retiree benefits that would make their post-retirement years financially secure.

54. The history of this benefits treatment by the employer predecessors of Defendants is illustrated by the experience of Class members who were former employees of Defendant Carolina Telephone & Telegraph Company. In 1900, the Carolina Telephone and Telegraph Company was formed as a North Carolina corporation, having been created by the merger of the Tarboro Telephone Company and other local telephone and telegraph carriers. It is now known as Carolina Telephone and Telegraph, LLC (“CT&T”). Defendant CT&T is now a wholly-owned subsidiary of Defendant Embarq, which provides telecommunication services in eastern North Carolina under the Embarq name and logo.

55. Upon information and belief, during the 1940’s CT&T began to offer medical insurance benefits to its employees. In 1964, CT&T created the Defendant Carolina Telephone and Telegraph Voluntary Employees Beneficiary Association Sickness and Death Benefit Plan (“VEBA”). Defendant VEBA was a plan pre-funded by tax-favored employer contributions made by CT&T and its successors. The VEBA provided disability and death benefits to current employees of CT&T and death benefits to the retirees of CT&T. The death benefit was defined by the VEBA as an amount equal to twelve months of annual wages for the employee or the retiree at his final salary, or \$500, whichever amount was greater.

56. On or about March 28, 1969, CT&T became a wholly owned subsidiary of United Utilities Inc., a Kansas City holding company. United Utilities Inc. continued its operations in North Carolina under the name of its subsidiary, CT&T.

57. Upon information and belief, during 1971, CT&T established a new employee welfare benefit plan to provide its employees and retirees with additional life insurance at no cost to the employee (“the Grand-fathered Life Insurance”). The Grand-fathered Life Insurance

was in addition to the VEBA death benefit mentioned above and it was not a replacement for that benefit.

58. The Grand-fathered Life Insurance plan provided employees with a death benefit in the amount of two times their annual salary (rounded down to the nearest \$1,000) for the first five years of their retirement. After five years of retirement, the Grand-fathered Life Insurance provided a death benefit in an amount equal to one times the employee's annual salary (rounded down to the nearest \$1,000), with coverage continuing at that amount for the remainder of the employee's life.

59. The Grand-fathered Life Insurance was initially provided pursuant to a contract with Pilot Life Insurance Company in Greensboro, North Carolina.

60. Upon information and belief, this Grand-fathered Life Insurance was provided as part of the Defendant Group Life, Accidental Death and Dismemberment and Dependent Life Plan for Employees of Carolina Telephone and Telegraph Company.

61. In 1972, United Utilities Inc. changed its name to United Telecommunications Inc. United Telecommunications continued its operations in North Carolina under the name of its subsidiary, CT&T.

62. Upon information and belief, Defendant CT&T and the other Defendants continued to provide the Grand-fathered Life Insurance through a contract with The Equitable Group and the name of the plan was changed to "The Equitable Group Life, Accidental Death and Dismemberment and Long Term Disability Plan."

63. Upon information and belief, Defendant Sprint Nextel and later Defendant Embarq obtained insurance contracts to fulfill their obligations to provide the Grand-fathered

Life Insurance to CT&T employees and retirees, until this benefit was cut-off by Embarq on July 26, 2007, one of the benefit cutbacks at issue in this lawsuit.

64. On or about September 1, 1973, United Telecommunications adopted an “early retirement” program for retirees, including retirees of Defendant CT&T, to encourage more senior, and in general more highly paid, employees to retire earlier than they otherwise would have.

65. Such early retirement programs were repeatedly employed by the employer Defendants and their predecessors in interest to induce senior employees to retire early and thereby create significant savings for the employers by avoiding payroll, fringe benefit and additional pension accruals and costs for the employees who were induced to retire early.

66. In addition, from the time of the 1973 program forward, the employer Defendants also exploited and publicized upcoming prospective changes in retiree benefits, including the benefits at issue in this lawsuit, as a second means of inducing employees to take early retirement. Defendants informed Plaintiffs and other members of the Class that accepting early retirement would enable them to retain their vested medical and life insurance benefits and avoid application of the upcoming changes in these benefits. Due to the financial importance of these benefits to retirees and their spouses over their anticipated years of retirement, the opportunity to secure these benefits was a powerful motivator for employees to accept early retirement.

67. On or about 1977, Defendant CT&T, which was a subsidiary of United Telecommunications, merged with two other regional telephone companies, United Telephone Company of the Carolinas and Norfolk Carolina Telephone Company, and expanded its service area into parts of Virginia and South Carolina.

68. On information and belief, from 1977, if not earlier, until 2007, Defendant CT&T and the other Defendant employers provided employees and retirees with subsidized medical and prescription drug benefits through the Defendant ERISA benefit plans, together with company-paid life insurance benefits (which were equal to as much as \$ 40,000 to a surviving spouse or other beneficiary).

69. For at least thirty years, from at least 1977, if not earlier, until July 26, 2007 (when the benefit changes at issue in this lawsuit were announced), Defendants repeatedly represented to Plaintiffs and Class members, both orally and in writing, that they would continue after and throughout retirement to receive the company-subsidized and company-paid medical and prescription drug benefits for their lifetimes.

70. On information and belief, from 1977 until the retirements of Plaintiffs, Defendants also offered employees and retirees the opportunity to purchase optional life insurance benefits at group rates, but solely at the employee's or retiree's own cost.

71. The majority of Plaintiffs and Class members were induced by Defendants' representations about the lifetime availability to them of the company-paid life insurance benefits, VEBA death benefits, and Grand-fathered Life Insurance benefits to understand that these benefits were secure and adequate protection for their surviving spouses and dependents, and they generally declined their opportunity to obtain optional life insurance coverage, either through Defendant's own programs or on the open market.

72. For at least thirty years, from at least 1977, if not earlier, until July 26, 2007 (when the benefit changes at issue in this lawsuit were announced), Defendants repeatedly represented to Plaintiffs and the members of the Class, both orally and in writing, that they would continue after and throughout retirement to receive the company-paid life insurance

benefits, and in the case of the Sub-Class, the Grand-fathered Life Insurance benefits (in an amount equal to twice their final annual salary, reduced to the amount of their final annual salary after five years of retirement) in addition to their VEBA death benefits, and that these life insurance and death benefits would be provided at no cost throughout their retirements for their lifetimes.

73. For example, on or about February 23, 1987, William T. Esrey, President and Chief Executive Officer of United Telecommunications Inc., notified eligible employees of Defendant CT&T of a new incentive to retire early. The incentive allowed employees to retire at age 62 or older with no actuarial reduction in benefits due to early commencement of the pension, and to retire at age 55 with ten years of continuous service. These changes allowed employees to obtain greater pension benefits if they retired under the program.

74. At the same time, Defendant CT&T and its parent company, United Telecommunications, the predecessor of Defendants Sprint Nextel and Embarq, also represented that employees who elected to retire would continue after and throughout retirement to have company-paid and subsidized medical and prescription drug benefits and fully-paid Grand-fathered Life Insurance and VEBA death benefits for their lifetimes.

75. On or about September 11, 1989, United Telecom announced that it was rolling out a new “Flexcare” benefit plan to provide health and pharmacy benefits to the employees in a “cafeteria” style plan.

76. On October 26, 1989, United Telecom/US Sprint President and Chief Executive Officer William T. Esrey announced to CT&T employees that the retiree medical plan was going to change and become less valuable, effective with retirements occurring on and after January 1, 1991.

77. The changes announced in October 1989 also were intended to induce and did induce employees to retire early in order to retain their retiree medical benefits in their pre-change form throughout retirement.

78. Employees who retired during calendar year 1990 were provided with handouts promising them that they would continue to receive subsidized medical and prescription drug benefits and the Grand-fathered Life Insurance throughout the duration of their retirements up until their deaths.

79. Employees retiring after January 1, 1991 were to receive their healthcare benefits under a Flexcare plan (cafeteria plan) allowing them credits for their years of service and a choice of different indemnity health insurance plans. At no point did Defendants reserve or clearly communicate the right to reduce or terminate these subsidized health and prescription drug benefits offered to retirees, or warn Plaintiffs and Class members of the existence of any such right to reduce or terminate benefits after retirement.

80. Despite the adoption of the Flexcare plan, Defendants specifically and repeatedly represented to longtime CT&T employees, including Plaintiffs and members of the Class, that their Grand-fathered Life Insurance would be available post-retirement for the rest of their lives at no cost.

81. In early 1992, United Telecommunications changed its name to Sprint Corporation. After this name change, the medical and prescription drug benefits plans that had been maintained by United Telecommunications adopted the Sprint name, including Defendants Sprint Retiree Medical Plan, Defendant Group Health Plan for Certain Retirees and Employees of Sprint Corporation, Defendant Sprint Welfare Benefit Plan for Retirees and Non-Flexcare Participants, and Defendant Sprint Group Life and Long Term Disability Plans.

82. In late April or May 1992 and at times thereafter, CT&T employees received an “Employee Bulletin” dated April 28, 1992, and bearing the Sprint logo and issued by the Corporate Communications Department. This document reaffirmed their right to both the Grand-fathered Life Insurance coverage and the VEBA death benefit.

83. In 1993, Sprint Corporation merged with Centel (another major independent telephone company) and began to operate in North Carolina and three other states as Sprint Mid-Atlantic Telecom.

84. On or about December 15, 1993, Sprint Mid-Atlantic announced prospective changes in its retirement plans to induce employees to retire early. Those changes included additional changes in the retiree benefit plans, but they did not alter the promise to provide Plaintiffs and the members of the Class with subsidized medical and prescription drug benefits, and fully paid Grand-fathered Life Insurance and VEBA death benefits.

85. On December 15, 1993, Defendant Randall T. Parker, writing as Director of Benefit Program Management for Sprint, informed employees that “the cost of basic retiree life insurance will now be totally paid by the company for all non-bargaining employees who retire after January 1, 1994. Upon retirement you will receive life insurance coverage of 50% of eligible pay, to a maximum of \$25,000.” This improved life insurance benefit was in addition to the Grand-fathered Life Insurance coverage and the VEBA death benefit for members of the Sub-Class.

86. On or about October 17, 2001, Defendant Sprint announced further changes in their retiree welfare benefit plans and new incentives to retire early. Sprint announced that it was changing the medical and prescription drug benefits program to a “SHARE” program and that employees who did not elect to retire by December 31, 2001 would no longer be eligible to

retire with the traditional plan of company-paid and subsidized medical and prescription drug benefits. Defendant Sprint also announced that it was changing its retirement benefit programs and that any employees who elected to retire after December 31, 2001 would no longer be entitled to the Grand-fathered Life Insurance.

87. At the same time, Linda J. Wallace, Benefit Supervisor for Sprint in Overland Park, Kansas, sent out e-mails verifying that the CT&T Grand-fathered Life Insurance equal to “two times salary” would only be available to those who retired by the end of 2001.

88. Through their announcements of changed benefits for retirements occurring after 2001, Defendants induced many employees, including Plaintiffs Hollingsworth, Dillon, Games and Bullock and other members of the Class, to end their productive careers early and retire early in order to retain their company-paid medical, prescription drug, and life insurance benefits. Some retirees, including Plaintiffs Hollingsworth and Bullock and other members of the Class, also were forced to give up accumulated vacation pay in order to show their date of retirement by December 31, 2001.

89. Between December 2001 and July 26, 2007, Defendants continued to systematically and affirmatively represent to retirees that they would have a right to company-paid and subsidized medical, prescription drug and life insurance benefits, and to conceal the fact that Defendants believed that they retained the ability to reduce or terminate the benefits that were being received by retirees at any time during their retirements. Accordingly, Plaintiffs and the members of the Class had no reason to believe that their rights had been violated by Defendants through their material misrepresentations and omissions, that they needed to seek legal counsel to determine their rights, or that legal action was necessary to protect their rights.

90. The benefits information that was the subject of these misrepresentations and omissions was material because reasonable employees and retirees, including Plaintiffs and the members of the Class, viewed this information as important to their personal decision-making. Plaintiffs and the members of the Class reasonably relied on Defendants' representations and omissions of material information to the effect that they would have a right to receive throughout retirement and for their lifetimes company-paid and subsidized medical, prescription drug and life insurance benefits in making important personal decisions relating to their retirement, their own and their spouses' post-retirement employment, their investments, their purchase of personal and real property, their purchase of life and health insurance, and in making other decisions pertinent to household budgeting and finances. Plaintiffs and the members of the Class, due to Defendants' misrepresentation and concealment of material information, were misled by Defendants and thus were induced to make decisions that harmed them financially. These acts of detrimental reliance by each Plaintiff and Class member have continued throughout their periods of retirement, until they received the Embarq announcement dated July 26, 2007.

91. By letter dated July 26, 2007, Defendant Embarq announced that it was eliminating medical and prescription drug benefits (and subsidies for drug benefits) for any retirees who were eligible for Medicare.

92. On July 26, 2007, Defendant Embarq also announced that it was eliminating the Grand-fathered Life Insurance benefit and all other life insurance benefit for retirees participating in the VEBA plan. Embarq also announced that it was reducing the level of other life insurance benefits, to a maximum of \$ 10,000, an amount which was as little as 25% of the promised life insurance benefits.

93. These cutbacks in retiree benefits are unlawful as set forth below and they have caused Plaintiffs and the members of the Class injury and damage in the form of payment of increased premiums for medical, prescription drug, and life insurance benefits and coverage and charges for medical services and prescription drugs; their inability to obtain or maintain alternative medical, prescription drug and life insurance coverage at reasonable cost due to their now advanced ages and impaired health conditions; and other financial losses resulting from their reliance on Defendants' misrepresentations and omissions, including the loss of salary, pension and other fringe benefits that they would have received as a result of continued employment had they not been induced by Defendants to retire early, and the loss of income and earnings from post-retirement employment and business opportunities that they would have received had they not been misled by Defendants about the security of their retiree benefits.

FIRST CLAIM FOR RELIEF

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

94. Plaintiffs incorporate paragraphs 1 through 93 by reference as though fully set forth herein.

95. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a participant or beneficiary to bring suit to restore and reinstate benefits due under the terms of a plan, to enforce his or her rights under a plan, or to clarify his or her rights to future benefits under the terms of a plan.

96. Upon retirement, Plaintiffs and the members of the Class vested in the subsidized retiree medical benefits, prescription drug benefits, life insurance benefits, and Grand-fathered Life Insurance benefits under the terms of the plans referred to in this Complaint.

97. In contravention of these vested rights, Defendants have withheld and will withhold benefits due to Plaintiffs and the members of the Class.

98. Plaintiffs and the members of the Class are entitled to relief in the form of an Order declaring that they are vested in the retiree medical benefits, prescription drug benefits and subsidies, and life insurance benefits provided to them by Defendants at the times of their retirements, and that any plan amendment purporting to reduce or terminate any of such benefits is null and void; to an Order reforming the Plans to remove all amendments that have purported to reduce or terminate any of such benefits; to an Order enjoining that Defendants and the Plans pay all past due and future medical benefits, pharmacy benefits and subsidies, and life insurance benefits improperly withheld from Plaintiffs and the members of the Class; to an award of reasonable attorneys' fees, expenses and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g); and to such other relief as the Court may deem equitable and just.

SECOND CLAIM FOR RELIEF

BREACH OF FIDUCIARY DUTY
PURSUANT TO ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3)

99. Plaintiffs incorporate paragraphs 1 through 93 by reference as though set forth fully herein, including the above-referenced class allegations. This Claim for Relief is brought against fiduciary Defendants Embarq, Sprint, Embarq Mid-Atlantic, CT&T, and Parker.

100. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a participant or beneficiary to bring suit to enjoin any act or practice that violates any provision of ERISA or the terms of a plan, and to obtain other appropriate equitable relief to redress such violations or to enforce any provision of ERISA.

101. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that fiduciaries discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries and (1) for the exclusive purpose of providing benefits to participants and their beneficiaries, (2) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like purpose, and (3) in accordance with the documents and instruments governing the plan. Explaining and describing the subject retiree medical benefits is a fiduciary act of plan administration which is subject to these strict ERISA fiduciary duties.

102. If the subject medical, prescription drug and life insurance benefits were not in fact secure from reduction or termination during retirement, then Defendants were aware of this highly material fact. Defendants therefore knew (or as reasonable fiduciaries should have known) that their pervasive, contrary representations of secure lifetime benefits were false and misleading. Defendants also knew (or as reasonable fiduciaries should have known or foreseen) that the benefits information was important to reasonable employees and retirees, including Plaintiffs and the members of the Class, and was influencing their important personal decisions such as whether and when to retire, and that Defendants' contrary representations and omissions were confusing them, both before and after retirement, into understanding that their retiree benefits were secure. Defendants intended and expected that Plaintiffs and the members of the Class would have and act on this understanding. Notwithstanding the highly material nature of the benefits information that Defendants misrepresented or omitted, Defendants did not act to correct the understanding of Plaintiffs and the members of the Class but instead acted to reinforce their understanding of secure benefits through their continued, pervasive misstatements and omissions. Defendants' misstatements and omissions continued up until July 26, 2007.

103. If the subject medical, prescription drug and life insurance benefits were not in fact secure from reduction or termination during retirement, then each fiduciary Defendant breached its strict fiduciary duties to Plaintiffs and the members of the Class on a continuing basis by failing to clearly disclose to Plaintiffs and the members of the Class (a) complete, accurate and non-misleading material information regarding the possibility of future adverse changes to their retiree medical, prescription drug, and life insurance benefits, (b) the material information that these benefits were not secure and that changes to the subsidized retiree medical, prescription drug, and life insurance benefits were possible and/or were under serious consideration, and by related acts of affirmative, uniform misrepresentations and omissions and concealment.

104. In addition, each of the fiduciary Defendants was a “co-fiduciary” and is jointly liable for all breaches committed by each other fiduciary Defendant and each other non-defendant fiduciary, including each Defendant’s employees and agents, which misrepresented or omitted material information about the benefits, under Section 405 of ERISA, 29 U.S.C. § 1105. Under this provision, each fiduciary Defendant is liable because each (a) knowingly participated in, or knowingly undertook to conceal, acts or omissions of one or more other fiduciaries regarding the benefits misrepresentations and omissions, knowing such acts or omissions were a breach; (b) by the failure to train, supervise and monitor the other fiduciaries, enabled one or more other fiduciaries to commit a fiduciary breach in misrepresenting or omitting material information by failing to comply with its own fiduciary duties in the administration of its specific responsibilities to accurately and clearly provide the benefits information; and/or (c) knew of a breach by one or more other fiduciaries in the misrepresentation or omission of material benefits information but failed to make reasonable efforts under the circumstances to remedy the breach.

105. As a direct and proximate result of Defendants' violations of their strict ERISA fiduciary duties, and their concealment of material benefits information, Plaintiffs and the members of the Class have been harmed.

106. Plaintiffs and the members of the Class are entitled to equitable relief to fully remedy Defendants' violations, including an Order enjoining Defendants, and each of them, to reinstate, restore and provide to them the subject retiree medical, prescription drug , and life insurance benefits.

107. Plaintiffs and the members of the Class are also entitled to further equitable relief, including entry of an Order requiring an accounting by Defendants of all profits and savings attributable to their fiduciary violations, including all profits and savings resulting from their inducement of early retirements and from elimination of company-paid and subsidized retiree medical, prescription drug and life insurance benefits; disgorgement of all such profits; other surcharges on Defendants and monetary relief to make Plaintiffs and the members of the Class whole for all losses and harm caused by the fiduciary violations; an award of reasonable attorneys' fees, expenses and costs pursuant to 29 U.S.C. § 1132(g); and such other and further relief as the Court may deem equitable and just.

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)

108. Plaintiffs incorporate paragraphs 1 through 93 by reference as though set forth fully herein, including the class allegations relating to ERISA claims.

109. This claim is brought under 28 U.S.C. § 2201 and ERISA § 502(a)(1)(B) and (3), 29 U.S.C. § 1132(a)(1)(B) and (3).

110. An actual controversy exists between the parties as follows: Plaintiffs and the members of the Class and Sub-Class contend that they vested upon their retirements in the company-paid and subsidized retiree medical benefits, prescription drug benefits, and life insurance benefits provided to them at the time of retirement, or that such benefits otherwise could not be materially reduced or terminated during their retirements. Upon information and belief, Defendants contend that these benefits did not vest, and that it rightfully terminated or reduced these benefits. Due to the recent actions by Defendant Embarq to terminate or reduce these benefits, this controversy warrants declaratory relief.

111. Plaintiffs and the members of the Class are entitled to declaratory relief in the form of an Order that Plaintiffs and the members of the Class are entitled to reinstatement and restoration of the company-paid and subsidized retiree medical, pharmacy and life insurance benefits from Defendants, and each of them, in the form in which they received them at the time of their retirements; reasonable attorneys' fees, expenses and costs pursuant to 29 U.S.C. § 1132(g); and such other and further relief as the Court may deem equitable and just.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the members of the Class and Sub-Class pray that the Court grant the following relief:

1. Declare that the actions of Defendants as set forth herein are in violation of ERISA and issue a preliminary and permanent injunction reinstating and restoring to Plaintiffs and the members of the Class and Sub-Class the subject medical, prescription drug and life insurance benefits and compelling Defendants to provide these benefits to them for the remainder of their lifetimes;

2. Order equitable reformation of the plans described in this lawsuit to reinstate these benefits and provide that these benefits shall not be reduced below the levels provided to Plaintiffs and the members of the Class and Sub-Class on July 25, 2007;

3. Order an accounting of all profits and savings realized by the fiduciary Defendants and attributable either to their misrepresentation or omission of material information about the benefits, or to their elimination of retiree medical, prescription drug, and life insurance benefits or their inducement of Plaintiffs and the members of the Class to retire early, including all such profits and savings relating to salary, compensation, pension benefits, fringe benefits, and all other payroll and overhead costs that were avoided by the fiduciary Defendants as a result of inducing them to retire early;

4. Order a surcharge on the fiduciary Defendants, and grant restitution and other monetary relief, to make Plaintiffs and the members of the Class whole for all losses caused by the unlawful actions of the fiduciary Defendants, including payment of all medical benefits, prescription drug benefits and subsidies, and life insurance benefits, including death benefits, that have been improperly withheld from Plaintiffs and the members of the Class and Sub-Class as of the time of judgment;

5. Declare that Plaintiffs and the members of the Class and Sub-Class are vested in the retiree medical and prescription drug benefits provided by Defendants at the time of their retirements, or that these benefits cannot otherwise be reduced or terminated;

6. Declare that Plaintiffs and the members of the Class are vested in life insurance benefits provided by Defendants at the time of their retirements, or that these benefits cannot otherwise be reduced or terminated;

7. Declare that Plaintiffs and the members of the Class are entitled to receive in the future retiree medical benefits, prescription drug benefits and subsidies, and life insurance benefits, unreduced from those promised to them at the time of their retirements;
8. Award reasonable attorneys' fees, expenses and costs pursuant to 29 U.S.C. § 1132(g);
9. Award pre-judgment and post-judgment interest; and
10. Grant such other relief as the Court deems equitable and just.

PLACE OF TRIAL

Pursuant to Local Rule 40.2, Plaintiffs request Kansas City, Kansas as the place of trial.

Dated: December 28, 2007.

Respectfully submitted,

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