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February 15, 2007

Via Hand Delivery

Ms. Renee J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RE: In the Matter of the Complaint of Treemasters Tree Service, Inc. v. Verizon North Inc.;
PUCO Case No. 07-77-TP-CSS

Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of a Motion to Dismiss and Memorandum in Support, to be filed in connection with the above-referenced matter on behalf of Verizon North Inc. Given the severe weather conditions of February 14, 2007, the undersigned counsel requests that this Motion to Dismiss and Memorandum in Support be considered timely-filed.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,



Carolyn S. Flahive

Enclosure

cc: Scott Farkas, Attorney Examiner

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Complaint of
Treemasters Tree Service, Inc.,**

Complainant

v.

Verizon North Inc.,

Respondent.

Case No. 07-77-TP-CSS

VERIZON NORTH INC.'S MOTION TO DISMISS

Verizon North Inc. ("Verizon"), through its counsel, respectfully moves the Commission pursuant to O.A.C. 4901-9-01 to dismiss the Complaint of Treemasters Tree Service, Inc. ("Complainant") with prejudice on the grounds that: (1) Complainant lacks standing to bring the Complaint because Complainant is not the customer at the service address in question; (2) the Complaint alleges no violation of R.C. § 4905.26; (3) the Complaint alleges injuries outside of the jurisdiction of the Commission and seeks relief that the Commission has no authority to grant; and (4) Complainant is impermissibly represented by a non-attorney in violation of O.A.C. 4901-1-08(A).

These matters are addressed in the accompanying "Memorandum in Support of Verizon's Motion to Dismiss."

Dated: February 14, 2007

Respectfully submitted,

VERIZON NORTH INC.

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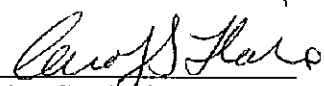
Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of the foregoing *Verizon North Inc.'s Motion to Dismiss* upon:

Jeff Bumbulis
Treemasters Tree Service, Inc.
7784 Spencer Lake Road
Medina, OH 44256

by U.S. mail this 15th day of February, 2007.



Carolyn S. Flahive

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Complaint of
Treemasters Tree Service, Inc.,**

Complainant

v.

Verizon North Inc.,

Respondent.

Case No. 07-77-TP-CSS

**VERIZON NORTH INC.'S MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

Verizon North Inc. ("Verizon"), through its counsel, respectfully submits this Memorandum in support of its Motion to Dismiss the Complaint pursuant to O.A.C. 4901-9-01. As detailed below, there are at least four independent bases upon which dismissal is required.

I. COMPLAINANT LACKS STANDING TO BRING THE COMPLAINT

The Complaint explicitly concedes that Complainant was not the Verizon customer at the service address at issue in the Complaint: "We are a customer of the utility company but not at the service address." (Complaint at 1). However, the events alleged in the Complaint are all claimed to have occurred at the service address identified therein. Even taking the allegations of the Complaint as true, because Complainant is admittedly not the Verizon customer at the service address at issue, Complainant lacks standing to bring the Complaint regarding alleged damages incurred at the service address. Accordingly, the Commission must dismiss the Complaint.

II. THE COMPLAINT ALLEGES NO VIOLATION OF R.C. § 4905.26

The Complaint fails to state grounds for a complaint against Verizon pursuant to R.C. § 4905.26 because Complainant has failed to allege a violation of any rules, regulations or laws that would constitute a violation of R.C. § 4905.26, which is limited to rates and services. The Complaint is devoid of any allegations regarding rates and charges, and by Complainant's own admission, Complainant was receiving no services from Verizon at the service address at issue. Instead, the allegations of the complaint appear to attempt to raise a tort claim. Because the Complaint alleges no violation of R.C. § 4905.26, it should be dismissed.

III. THE COMPLAINT ALLEGES INJURIES AND SEEKS RELIEF THAT FALL OUTSIDE THE COMMISSION'S JURISDICTION

As noted above, the Complaint appears to attempt to raise a tort claim, alleging that Complainant's truck was damaged by a low-hanging wire owned by Verizon at a service address not belonging to Complainant. It is textbook Ohio law that the Commission has no jurisdiction over Complainant's claim for reimbursement for damages to its truck as a result of any alleged negligence on Verizon's part regarding the maintenance of its facilities. In recently dismissing a complaint that the installation of a new gas meter resulted in a water leak in Complainant's basement, the Commission explained that the complaint concerned the denial of complainant's claim for damages by the gas utility's insurer, and was therefore "not a matter within our service and rate-related jurisdiction." *See In the Matter of the Complaint of Lou Wenzowski*, Case No. 06-568-GA-CSS (Entry, September 27, 2006) at 5.

In *Wenzowski*, the Commission confirmed that although the Ohio Supreme Court has interpreted R.C. § 4905.26 as conferring jurisdiction on the Commission to hear all complaints pertaining to rates or services provided by a public utility (citing *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151 (1991)), “[t]his does not mean, however, that every claim asserted against a public utility is within the exclusive jurisdiction of the Commission.” See *Wenzowski* at 3-4. The Commission continued on to make clear that “[p]ure contract and common-law tort claims against a public utility should be brought in a common pleas court even though brought against corporations subject to the authority of the Commission”¹ (citing *Milligan v. Ohio Bell Tel. Co.*, 56 Ohio St.2d 191 (1978)). *Id.*

In *Wenzowski*, the Commission noted that the Ohio Supreme Court had previously held that a utility’s failure to warn landowners of dangers of neutral-to-earth voltage constituted a tort claim for the courts, citing *Kohli v. Pub. Util. Comm.*, 18 Ohio St.3d 12 (1985). See *Wenzowski* at 4. The Commission further acknowledged that it had itself recognized limitations on its jurisdiction to consider and determine pure contract claims that did not involve tariffs (citing *Marketing Research Services, Inc. v. Pub. Util. Comm.*, 34 Ohio St.3d 52 (1987)). *Id.* at 4-5. The Commission therefore noted that the critical question is whether a complaint is primarily a question of service or rates, or if it raises a tortious cause of action that is independent of service and/or rate-related questions. *Id.* at 5. It is plain that the instant case falls into the latter category.

¹ The Commission has long held that it may not order monetary damages. See *In the Matter of the Complaint of R. Allen Hodge*, Case No. 02-1483-EL-CSS (Entry, July 18, 2002) at 1-2; *In the Matter of the Complaint of Metatec Corporation and Chubb & Son Insurance Company*, Case No. 01-2386-EL-CSS (Entry, November 7, 2001) at 1-2.

The Commission has ruled similarly in prior proceedings. In *In the Matter of the Complaint of Barbara C. Kelly v. The Dayton Power and Light Company*, Case No. 00-2497-GE-CSS (Entry, February 15, 2001), the Commission dismissed a complaint brought under R.C. § 4905.26 for moisture damage to Complainant's home allegedly resulting from the improper installation of insulation associated with a weatherization program, noting as follows:

The Commission would emphasize that the basis of the complaint, alleged negligence in the installation of insulation, constitutes and action at law which is beyond the jurisdiction of this Commission under Section 4905.26, Revised Code.

See Entry at 3 (emphasis added).

In dismissing a complaint seeking monetary damages and alleging that a broken water line caused an electric surge that damaged appliances in Complainant's home, the Commission dismissed the case, holding as follows:

The Commission, therefore, believes that Ms. Eishen's complaint, in essence, is seeking damages for tortious acts. These allegations are not within our service and rate-related jurisdiction. Moreover, we do not have authority to award monetary damages for the loss of her appliances. Additionally, it must be recognized that we reached the same conclusion in a similar case in 1987. Bailey v. The Toledo Edison Company, Case No. 87-765-EL-CSS, Entry (August 4, 1987). ... This complaint appears to be an action at law, not an administrative matter, and should be filed in the civil courts.

See *In the Matter of the Complaint of Anne Eishen v. Columbia Gas of Ohio, Inc.*, Case No. 01-885-GA-CSS (Entry, November 20, 2001) at 5 (emphasis added).

There can be no debate that the instant proceeding falls under *Wenzowski* and its predecessors, and must be dismissed given the Commission's lack of jurisdiction over the subject matter of the Complaint and Complainant's request for monetary damages. The

propriety of dismissal is only magnified in this case given that Complainant admits that it was not a Verizon customer at the service address that is the subject of the Complaint.

IV. COMPLAINANT IS IMPERMISSIBLY REPRESENTED BY A NON-ATTORNEY IN VIOLATION OF O.A.C. 4901-1-08(A)

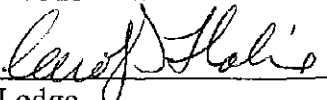
O.A.C. 4901-1-08(A), which governs practice before the Commission, requires that “[c]orporations must be represented by an attorney-at-law.” Complainant pleads that it is a corporation (“Treemasters Tree Service, Inc.”), but appears through a company “representative,” rather than an attorney. This violates Commission rules, and provides independent grounds for dismissal of the Complaint.

WHEREFORE, for the reasons explained above, Verizon North Inc. requests that the Complaint be dismissed with prejudice pursuant to O.A.C. 4901-9-01.

Dated: February 14, 2007

Respectfully submitted,

VERIZON NORTH INC.

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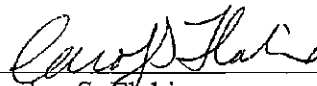
Its Attorneys

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I hereby certify that I have forwarded a copy of the foregoing *Verizon North Inc. 's Memorandum in Support of Motion to Dismiss* upon:

Jeff Bumbulis
Treemasters Tree Service, Inc.
7784 Spencer Lake Road
Medina, OH 44256

by U.S. mail this 15th day of February, 2007.


Carolyn S. Flahive