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December 7, 2007

## VIA HAND DELIVERY

Ms. Renee Jenkins  
Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street, 13<sup>th</sup> Floor  
Columbus, OH 43215-3793

Re: *In the Matter of the Complaint of Verizon North, Inc., et al. v.  
CenturyTel of Ohio, Inc., et al., Case No. 07-1100-TP-CSS*

Dear Ms. Jenkins:

Enclosed herewith are the original and ten (10) copies of the *Reply Memorandum of Windstream Ohio, Inc., Windstream Western Reserve, Inc. and CenturyTel of Ohio, Inc. to Verizon's Memorandum Contra to the Motions to Dismiss of CenturyTel and Windstream* to be filed in the above-noted matter. Please time-stamp the three (3) additional copies of the Reply Memorandum and return them with our courier.

Thank you for your attention to this matter.

Very truly yours,

BAILEY CAVALIERI LLC

William A. Adams

WAA/sg

Enclosure

cc(w/enclosure): Calvin K. Simshaw, CenturyTel of Ohio, Inc.  
Barth E. Royer, Bell & Royer Co., LPA  
Christopher Oatway, Verizon  
Randall Vogelzang, Verizon  
David C. Bergmann and Terry L. Etter, Ohio Consumers' Counsel

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of )  
)  
Verizon North, Inc., MCIMetro Access )  
Transmission Services LLC d/b/a Verizon )  
Communications Services, Inc. d/b/a Verizon )  
Business Services, Teleconnect Long Distance )  
Services & Systems Co. d/b/a Telecom USA, )  
TTI National, Inc., Bell Atlantic )  
Communications, Inc. d/b/a Verizon Long )  
Distance, NYNEX Long Distance Company d/b/a )  
Verizon Enterprise Solutions and Verizon )  
Select Services, Inc. d/b/a GTE Long Distance )  
)  
Complainants, )  
)  
v. )  
)  
Century Tel of Ohio, Inc., Windstream Ohio, Inc. )  
and Windstream Western Reserve, Inc. )  
)  
Respondents. )

Case No. 07-1100-TP-CSS

RECEIVED-REGULATORY DIV  
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**REPLY MEMORANDUM OF WINDSTREAM OHIO, INC. AND WINDSTREAM  
WESTRN RESERVE, INC. TO VERIZON'S MEMORANDUM CONTRA TO THE  
MOTIONS TO DISMISS OF CENTURYTEL AND WINDSTREAM**

Windstream Ohio, Inc. and Windstream Western Reserve, Inc. (collectively "Windstream") hereby submit their Reply Memorandum in response to the Memorandum Contra the Motions to Dismiss of CenturyTel and Windstream filed by Verizon North, Inc., MCIMetro Access Transmission Services LLC d/b/a Verizon Communications Services, Inc. d/b/a Verizon Business Services, Teleconnect Long Distance Services & Systems Co. d/b/a Telecom USA, TTI National, Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions and Verizon Select Services, Inc. d/b/a GTE Long Distance (collectively "Verizon"). Verizon asserts in its memorandum contra that its

complaint sets forth "reasonable grounds" necessary to proceed to hearing. Verizon is mistaken. Verizon's analysis is deficient, and Verizon's complaint should be dismissed.

## **I. Standard of Review**

According to Section 4905.26, Revised Code, the Commission is required to set this matter for hearing only if Verizon has stated "reasonable grounds" for the complaint. In its memorandum contra, Verizon asserts that the standard to determine "reasonable grounds" is extremely broad. *Verizon Mem. at 2*. Notwithstanding Verizon's assertion, Commission precedent requires more than a mere comparison of Respondent's rates to those of the larger incumbent local exchange carriers ("ILECs") in Ohio and more than Respondent's self-serving interests in reducing its operating expenses to justify expending the resources necessary to defend or hear this complaint.

This Commission has determined that to satisfy the "reasonable grounds" test, the complaint at a minimum must contain allegations that, if true, would support a finding that Respondents' rates exceed those determined by the rate setting rules established by the Commission. *In the Matter of the Complaint of the Office of Consumers' Counsel, state of Ohio, on behalf of the residential consumers of West Ohio Gas Co., Complainant, v. West Ohio Gas Co., Respondent, Relative to unjust and unreasonable rates*, Case No. 88-173-GA-CSS, 1989 Ohio PUC LEXIS 104 (1989) at 17. The Commission further concluded that allowing a complaint to proceed to hearing when the complainant has failed to allege one or more elements necessary to find that the rates are unjust or unreasonable would improperly alter the scope and burden of proof. *Id at 16*.

## II. Verizon's Complaint Fails to State "Reasonable Grounds"

Verizon asserts that merely alleging that Respondents' rates are substantially higher than the rates charged by other large Ohio ILECs constitutes "reasonable grounds" as required by Section 4905.26, Revised Code. *Verizon Mem. at 4*. Verizon's assertion is simply incorrect and illogical. There are myriad reasons why the rates of Respondents could be higher than those of other large ILECs in Ohio. Yet, the rate differential alone -- particularly given the fact that the rates in question are lawfully approved tariffed rates and, therefore, deemed reasonable -- does not render Respondents' rates unjust or unreasonable. This is precisely why a complainant bears the burden of proving that rates exceed those resulting from the Commission's rate setting rules. In this instance, it is undisputed that Respondents' rates are tariffed and approved by the Commission. Further, Verizon's complaint does not allege that Respondents' rates are not in compliance with the Commission's rules. As a result, Verizon's complaint fails to meet the "reasonable grounds" test and should be dismissed.

In its Answer and Motion to Dismiss, Windstream explained in greater detail why a mere comparison of Respondents' rates to the rates of other large ILECs in Ohio does not constitute "reasonable grounds" and is completely inappropriate. As noted therein, the reforms implemented in the CALLS and MAG proceedings and the resulting rates from those reform efforts are more complex than Verizon sets forth and involve much more than a simple comparison and mirroring of another carrier's rates. *Windstream Mot. ¶10*. For example, other charges such as universal service and end user rate increases were part of those reform efforts. *Id. ¶12*. Contrary to Verizon's assertions, these analyses are, in fact, relevant as to whether Verizon has stated "reasonable grounds". *Verizon Mem. at 9*. More accurately, such analyses lie at the heart of the issue as to whether Verizon's complaint states the reasonable grounds

necessary to proceed. Indeed, Verizon compares rates established in accordance with FCC regulations that no longer have any similarity to state regulations. For this reason, the Commission's own precedent requires Verizon's complaint to allege some facts suggesting that Respondents' rates exceed those that would result from the Commission's rules, not the FCC's. Verizon wholly failed to do so.

Verizon further asserts that Respondents have failed to defend their switched access rates and have not asserted that this Commission has deemed their rates just and reasonable. *Verizon Mem. at 3*. Verizon's assertions are a weak attempt to shift the burden of proof in this matter inappropriately to Respondents. Verizon, as the complainant, has the burden of proof in this proceeding, not Respondents.<sup>1</sup> Notwithstanding that fact, it is illogical for Verizon to suggest that Respondents have failed to defend their rates given that those rates are lawfully tariffed and approved by the Commission and deemed reasonable.

By all accounts, Verizon has made insufficient allegations to support a finding that reasonable grounds have been stated to allow the complaint to proceed. The only facts asserted by Verizon are that Respondents' rates are higher than the largest ILECs in Ohio and that Verizon would benefit from the expense savings of reducing those rates. Those facts do not comport with prior Commission precedent and do not justify the commitment of significant resources by the parties and the Commission to proceed further. Verizon's complaint should be dismissed for these reasons alone.

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<sup>1</sup> In *West Ohio Gas*, the Commission concluded that failure to allege one or more elements necessary to find that the rates are not just or reasonable would improperly shift the burden of proof requirements. Consequently, Verizon's attempt to shift the burden of proof in this proceeding further supports the fact that Verizon failed to establish any facts that, even if true, would establish that Respondents' rates are not just or reasonable or set in accordance with the Commission's rules. The Commission previously determined this to be an impermissible result and should do so again here and dismiss Verizon's complaint.

### **III. Verizon's Attempt to Implement Incomplete Reform Policy Through a Complaint Proceeding Against only a Select Number of Carriers is Improper**

Verizon's attempts to improperly formulate policy changes through a complaint proceeding against only a select number of carriers and without any analysis of all aspects of such reform (including, for example, associated rate rebalancing) should be rejected. The Commission, as a matter of policy, has not concluded that small and mid-size ILECs in Ohio should be required to set their rates at the CALLS or MAG levels. As any such Ohio-specific reform has not been implemented (and is unwise for the reasons Windstream expressed previously regarding the dangers inherent in state-specific reform efforts), it remains unchallenged that Respondents' rates are set according to the Commission's rules and are lawfully tariffed and approved. Verizon's self-serving "policy" changes are not in the public interest and do not benefit Ohio consumers. *Windstream Mot* ¶8. Indeed, one could argue that they are not "policy" changes at all and merely are targeted efforts aimed at reducing Verizon's operating expenses. For instance, Verizon's reform is not aimed at all carriers in Ohio nor does it include comprehensive reform even as to the Respondents. Rather, Verizon aims its asserted "reform" at straight rate reductions without any consideration to rate rebalancing or to whether existing rates were set according to Commission rules. Additionally, Verizon filed its complaint only against those select companies (*i.e.*, Respondents) where such reductions would translate into the greatest expense savings for Verizon. In fact, while Verizon has refused to actively engage in any meaningful and comprehensive federal reform efforts, Verizon instead has undertaken the approach to file complaints like this one in select states where there are no adverse impacts to its ILEC affiliates but where its other affiliates may realize expense savings. See, *e.g.*, *Verizon's Verified Complaint To Reduce the Intrastate Switched Access Charges of Embarq Minnesota, Inc.* (filed September 15, 2007), *Petition of Verizon to Reduce Windstream's*

*Switched Access Charges (filed December 5, 2007 with the Kentucky Public Service Commission)*. Such self-serving efforts should not be mistaken for comprehensive reform and certainly do not justify the Commission or Respondents having to expend further resources hearing or defending the complaint. The parties' resources are better spent addressing meaningful reform of global concerns rather than focusing solely on access rate reductions in a handful of states where Verizon is the main beneficiary.

Verizon not only has failed to establish "reasonable grounds" necessary for proceeding with the complaint, but Verizon's targeted expense savings initiative disguised as "reform" is without merit. The Commission should resist implementing rate reductions that are designed to benefit only Verizon and not Ohio consumers as a whole. Similarly, the Commission should not be distracted by Verizon's contention that this complaint proceeding is the appropriate vehicle to implement reform policy. *Verizon Complaint* ¶9.<sup>2</sup> For the reasons discussed above, Verizon's efforts are misguided, not supported by Commission precedent, and should be dismissed.

#### **IV. Conclusion**

Verizon has failed to establish any facts which, even if taken as true, set forth "reasonable grounds" necessary for proceeding with the complaint. To the contrary, Verizon merely suggests that a simple comparison of Respondents' intrastate access rates to those of the large ILECs in Ohio necessitates reduction. Verizon fails, however, to make allegations that Respondents' rates were not set in accordance with Commission rules. Indeed, the only real facts Verizon alleges are that Respondents' rates are higher than those of the largest carrier in Ohio and that Verizon would benefit by the expense savings resulting from rate reductions. Such

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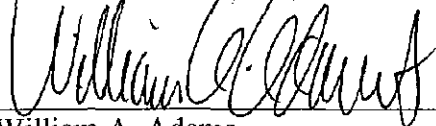
<sup>2</sup> In fact, Verizon itself recognized that the proper vehicle to address these policy issues is in the context of a generic proceeding rather than a complaint proceeding. See Motion of MCI for the Commission to Investigate and Restructure the Intrastate Access Charges of ALLTEL Ohio, Inc., CenturyTel of Ohio, Inc. The Chillicothe Telephone Company, Inc. and The Western Reserve Telephone Company, Inc. in Case N. 00-127-TP-COL.

reasoning is insufficient to justify the expense of additional resources to defend and hear this matter especially in light of Verizon's failure to meet its burden of proof and its effort wrongfully to shift that burden to Respondents. Commission precedent requires a complainant to set forth facts sufficient to allege that rates exceed the rates that would result from the Commission's rate setting rules. Verizon's complaint is wholly lacking in any such factual submissions. Windstream respectfully requests that the Commission find that Verizon failed to establish "reasonable grounds" in accordance with Section 4905.26, Revised Code and that Verizon's complaint should be dismissed with prejudice.

Respectfully submitted,

Windstream Ohio, Inc.

Windstream Western Reserve, Inc.

By: 

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**CERTIFICATE OF SERVICE**

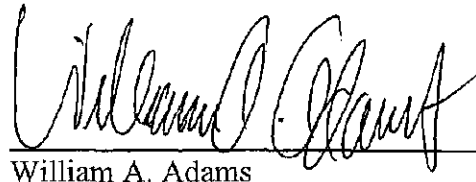
The undersigned hereby certifies that a true copy of the foregoing *Reply Memorandum of Windstream Ohio, Inc., Windstream Western Reserve, Inc. and CenturyTel of Ohio, Inc. to Verizon's Memorandum Contra to the Motions to Dismiss of CenturyTel and Windstream* was served upon the following by regular U.S. Mail this 7<sup>th</sup> day of December, 2007:

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