

**FILE**

**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, )  
v. )  
Century Tel of Ohio, Inc., Windstream )  
Ohio, Inc. and Windstream Western )  
Reserve, Inc., )  
Relative to Unjust and Unreasonable )  
Intrastate Switched Access Charges. )

Case No. 07-1100-TP-CSS

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PUCO

**MEMORANDUM CONTRA VERIZON'S MOTION FOR LEAVE TO FILE  
SURREPLY INSTANTER**

**BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**I. INTRODUCTION**

On October 5, 2007, the above-captioned complaint ("Complaint") was filed by Verizon<sup>1</sup> pursuant to R.C. 4905.26 seeking to reduce the intrastate access charges of Century Tel of Ohio, Inc. ("CenturyTel"), Windstream Ohio, Inc. and Windstream

<sup>1</sup> The Complaint refers to 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 as "Verizon."

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Western Reserve, Inc. (collectively “Windstream”).<sup>2</sup> On October 31, 2007, CenturyTel filed a motion to dismiss the complaint. On November 1, 2007, Windstream filed its motion to dismiss. On November 7, 2007, the Office of the Ohio Consumers’ Counsel (“OCC”) moved to intervene in this proceeding on behalf of residential consumers, and OCC’s Motion was granted on November 29, 2007.<sup>3</sup>

On November 19, 2007, Verizon filed its memorandum contra the motions to dismiss (“Verizon Memorandum Contra”). On December 7, 2007, OCC, CenturyTel and Windstream filed replies to the Verizon Memorandum Contra.

Two weeks later, on December 21, 2007, Verizon filed a “Motion for Leave to File Surreply Instanter to Reply Memoranda of CenturyTel, Windstream and OCC” (“Verizon Motion”). Accompanying the Verizon Motion was “Verizon’s Surreply to Reply Memoranda of CenturyTel, Windstream and OCC” (“Verizon Surreply”). Pursuant to Ohio Adm. Code 4901-1-12(B), OCC files this Memorandum Contra Verizon’s Motion. The Motion is without merit, and the Public Utilities Commission of Ohio (“Commission” or “PUCO”) should disregard the Verizon Surreply.<sup>4</sup>

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<sup>2</sup> The Complaint asked that these companies’ intrastate access charges be reduced to the level of intrastate access charges of other large incumbent local exchange carriers (“ILECs”), or alternatively, to the level of their own interstate access charges. Complaint at 2.

<sup>3</sup> Entry (November 29, 2007) at 2.

<sup>4</sup> This is especially true with regard to the material in the Surreply that is not properly cast as a Surreply. See Section III., *infra*.

## II. VERIZON'S MOTION FOR LEAVE TO FILE IS WITHOUT MERIT.

Verizon's sole argument for its surreply invokes "basic principles of fairness."<sup>5</sup> Verizon alleges that CenturyTel, Windstream and OCC, in their respective replies to Verizon's Memorandum Contra respondents' motions to dismiss, "advance a new ground for dismissal of the complaint not raised by the respondents in their October 31, 2007 motions to dismiss, asserting, for the first time, that Verizon's complaint is deficient under the standard set forth in *Consumers' Counsel v. West Ohio Gas Co.*, Case No. 88-1743-GA-CSS, Entry, 1989 Ohio PUC LEXIS 104, for evaluating the sufficiency of complaints alleging that a public utility's rates are excessive."<sup>6</sup> The circumstances mentioned in Verizon's Motion did not present any element of unfairness to Verizon.

As the Commission is well aware, both CenturyTel and Windstream's Motions to Dismiss asserted that Verizon's complaint failed to state reasonable grounds.<sup>7</sup> The fact that neither pleading specifically cited *Consumers' Counsel v. West Ohio Gas Co.* as authority for failure to state reasonable grounds does not represent any sort of unfairness to Verizon that merits consideration of a surreply.

Indeed, it really became clear only with the filing of Verizon's Memorandum Contra how heavily Verizon was relying on its allegations that:

Respondents' rates are substantially higher (a different order of magnitude) than the rates other large Ohio ILECs charge for the same functions. See Verizon Compl. ¶¶ 12-14. Also, given that, in the past, the Commission has used carriers' own interstate switched access rates as reasonableness benchmarks, Verizon's complaint alleged that a similar disparity exists between

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<sup>5</sup> Verizon Motion at 2.

<sup>6</sup> Id., citing CenturyTel Reply at 4-5, Windstream Reply at 2-4. and OCC Reply at 3-5.

<sup>7</sup> CenturyTel Motion to Dismiss at 2-4; Windstream Motion to Dismiss at 10.

Respondents' intrastate switched access rates and what they charge for the same functions when terminating or originating interstate telephone calls. *Id.* ¶ 15. Such allegations constitute "reasonable grounds" for complaint as required by Section 4905.26, Revised Code.<sup>8</sup>

Verizon's reliance on those two propositions regarding relative rates provoked the reference to *Consumers' Counsel v. West Ohio Gas Co.* by CenturyTel, Windstream and OCC. Use of the reference was entirely proper in response to Verizon's Memorandum Contra and did not present any element of unfairness to Verizon.

Contrary to Verizon's argument, the citations to *Consumers' Counsel v. West Ohio Gas Co.* did not represent "a new ground for dismissal of the complaint not raised by the respondents in their October 31, 2007 motions to dismiss."<sup>9</sup> Failure to consider Verizon's response to this argument would not, as suggested by Verizon, "mean that the record upon which the Commission must determine whether the complaint states reasonable grounds will be incomplete and distorted."<sup>10</sup> Verizon's Motion should be denied and its surreply ignored.<sup>11</sup>

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<sup>8</sup> Verizon Memorandum Contra at 4, quoted in OCC's Reply at 3.

<sup>9</sup> Verizon Motion at 2.

<sup>10</sup> *Id.* Under the procedural circumstances here, OCC will not essay a response to Verizon's arguments that *Consumers' Counsel v. West Ohio Gas Co.* is not relevant here.

<sup>11</sup> See *In the Matter of the Amendment of Certain Rules to Revise Language Requirements on Utility Bills and Other Documents*, Case No. 07-1042-AU-ORD, Finding and Order (November 20, 2007) at 5-6 (denying OCC's request on grounds of fairness to file surreply comments).

### **III. SECTION B. OF VERIZON'S SURREPLY SHOULD BE IGNORED.**

As noted above, the ostensible purpose of the Verizon Surreply is to respond to what Verizon claims was a "new" issue regarding reasonable grounds for complaint.<sup>12</sup> Despite this, the Verizon Surreply also includes a section devoted to the assertion that "the respondents and OCC ignore most of Verizon's Memorandum Contra."<sup>13</sup> Regardless of the merits of the ostensible purpose of Verizon's Motion, that purpose is not supported by listing the portions of Verizon's arguments in its Memorandum Contra that Verizon believes the respondents and OCC **did not** address in their replies.<sup>14</sup> The Commission should disregard Section B of the Verizon Surreply even if the PUCO considers the remainder of Verizon's pleading.

### **IV. CONCLUSION**

The PUCO should deny Verizon's Motion, and disregard the entirety of the proffered Surreply. The Commission should also grant the Motions to Dismiss Verizon's Complaint; the Complaint does not cite reasonable grounds under R.C. 4905.26.

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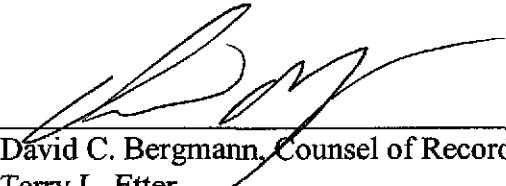
<sup>12</sup> See generally Verizon Motion.

<sup>13</sup> Verizon Surreply at 5-6.

<sup>14</sup> Id. Again, in the current procedural posture, OCC will not respond to substance of this part of Verizon's Surreply.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



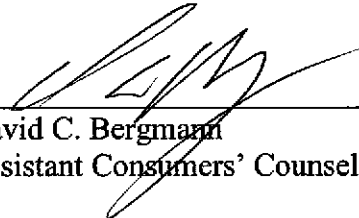
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Memorandum Contra Verizon's Motion for Leave to File Surreply Instantly by the Office of the Ohio Consumers' Counsel was sent by first class U.S. Mail to the persons listed below this 31<sup>st</sup> day of December 2007.

  
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<sup>15</sup> Verizon and Windstream have not designated a Counsel of Record as required by Ohio Adm. Code 4901-1-08(F). Mail service is being made upon their first-listed counsel; other counsel are being provided courtesy copies via e-mail.