

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Complaint of)
OTC Daihen, Inc.,)
)
Complainant,)
)
v.)
)
Frontier North Inc.,)
)
Respondent.)

Case No. 11-0549-TP-CSS

**MOTION TO DISMISS
OF
MCI COMMUNICATIONS SERVICES, INC.
d/b/a VERIZON BUSINESS SERVICES**

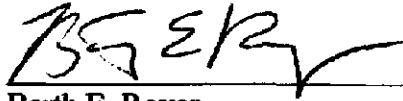
By entry in this docket of March 11, 2011, the Attorney Examiner found that MCI Communications Services, Inc. d/b/a Verizon Business Services ("MCICS") was a necessary party to this proceeding and directed MCICS to answer the Complaint filed herein on February 2, 2011 by OTC Daihen, Inc. ("Complainant"). As averred in its answer filed this date, and as more fully explained in the accompanying supporting memorandum, MCICS has never provided services to Complainant and has never billed the Complainant for any services, including the services that are the subject of the Complaint. Therefore, MCICS is not a necessary (or proper) party to this proceeding and the Complaint does not – and Complainant cannot – state reasonable grounds for complaint against MCICS. Accordingly, there is no basis for requiring MCICS to participate in this matter.

WHEREFORE, MCICS respectfully moves for an order dismissing the Complaint, with prejudice, as against MCICS, and dismissing MCICS as a party to this proceeding.

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Technician 41 Date Processed MAR 31 2011

Dated: March 31, 2011

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "BER", with a long horizontal line extending to the right.

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OTC Daihen, Inc.,)	
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v.)	
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Respondent.)	

**MEMORANDUM IN SUPPORT
OF
MOTION TO DISMISS
OF
MCI COMMUNICATIONS SERVICES, INC.
d/b/a VERIZON BUSINESS SERVICES**

By the above-captioned complaint filed herein on February 2, 2011 ("Complaint"), OTC Daihen, Inc. ("OTC" or "Complainant") alleges, *inter alia*, that Frontier North Inc. ("Frontier"), formerly known as Verizon North Inc., continued to improperly charge it for certain services that OTC reasonably believed had been terminated as of June 30, 2006. The Complaint states that, prior to February 10, 2010, the services in question – business data services and a T-1 line – had been provided by an entity known as "Verizon Business." Complaint ¶ 5. OTC submitted, as Exhibit A to the Complaint, a May 1, 2010 letter bearing a "verizonbusiness" logo, which notified OTC that its dedicated internet access service would terminate unless OTC took the steps necessary to transition to a new platform. According to the Complaint, OTC entered into an internet access and business data services agreement with a different provider on June 27, 2006, and assumed that, pursuant to the May 1, 2006 letter, the previous service arrangement

would be terminated effective June 30, 2006. Complaint ¶ 32. However, OTC alleges Frontier continued to bill OTC for these services into early 2010, and OTC inadvertently continued to pay these invoices until it discovered its error in February 2010. Complaint ¶¶ 11 and 13. By its Complaint, OTC seeks an order from this Commission finding, *inter alia*, that Frontier's failure to refund amounts paid by OTC to Frontier subsequent to June 30, 2006 is unreasonable and unlawful.

In its answer filed February 24, 2011 ("Answer"), Frontier admitted that the Complainant began subscribing to its business data and T-1 service in 2001. Answer ¶ 5. Frontier then stated that "Verizon Business is a separate legal entity from Frontier and provided separate services and separate billing to OTC." Answer ¶ 4. Yet, Frontier also stated that it lacked knowledge or information sufficient to form a belief as to whether Verizon Business provided service to OTC prior to February 2010. Answer ¶ 5. Further, Frontier specifically denied that the May 1, 2006 notice was sent by Frontier or its predecessor. Answer ¶ 7.

Confronted with these various allegations, the Attorney Examiner, pursuant to Rule 4901-1-10(A)(7), Ohio Administrative Code ("OAC"), issued an entry on March 11, 2011 ("Entry") joining MCI Communications Services, Inc. d/b/a Verizon Business Services ("MCICS") as necessary party to the case and directing MCICS to file an answer to the Complaint. Entry ¶ 3. In accordance with the terms of the Entry, MCICS has, this date, filed an answer to the complaint. However, by the foregoing motion to dismiss, MCICS seeks an order from the Commission dismissing the Complaint as against MCICS, and dismissing MCICS as a party to the proceeding. As demonstrated herein, MCICS has *never* provided services to Complainant and has *never* billed the Complainant for any services, including the services that are the subject of this Complaint. Thus, MCICS is not a necessary (or proper) party to this

proceeding, and the Complaint does not set forth reasonable grounds for complaint against MCICS as required by Section 4905.26, Revised Code. Further, the Complaint does not state a claim for relief against MCICS for which relief can be granted.

MCICS is a duly-certificated interexchange carrier in Ohio, and operates under the registered d/b/a "Verizon Business Services." In the March 11, 2011 Entry, the Attorney Examiner "observe[d] that, while Exhibit A [*i.e.*, the termination letter] of OTC's complaint originated from Verizon Business, Exhibit C [*i.e.*, the invoice] originated from Verizon North, Inc." Entry ¶ 3. Thus, the Attorney Examiner sought "clarity regarding which entity with the Verizon name was providing and billing OTC for internet and DS1 Service" (*id.*), and joined MCICS as a necessary party, presumably based on the similarity between its Ohio d/b/a, "Verizon Business Services," and the name "Verizon Business" used by the parties in the Complaint and Answer. However, MCICS is not the entity that was providing service to and billing OTC.

Verizon Communications Inc. merged with the former MCI, Inc. on January 6, 2006. MCICS is a former MCI, Inc. subsidiary that became a subsidiary of Verizon Communications, Inc. as a result of that merger. That merger led to the use of the term "Verizon Business" to refer generally to the several hundred affiliates owned by Verizon Communications Inc. that provide telecommunications and other services to business customers (as opposed to residential customers) throughout the world, and not to MCICS in particular. In view of the fact that OTC began subscribing to Verizon-branded data and T-1 services in 2001, nearly five years prior to Verizon Communications Inc.'s acquisition of MCICS, MCICS, by definition, could not have been the entity providing those services to OTC.

In exercising due diligence in response to the Entry, MCICS searched its records and confirmed that it has never has provided services to OTC at any time, whether before or after the 2006 Verizon/MCI merger. MCICS also confirmed through multiple record searches that the circuit number reflected in the Verizon invoice attached as Exhibit C to the Complaint does not belong to MCICS and never has. Rather, the circuit number referenced in the invoice contains the designation “VADI,” which refers to Verizon Advanced Data, Inc. (“VADI”), whose advanced data services assets were transferred to Verizon North Inc. in 2001. *See In the Matter of the Joint Application for Approval of Verizon North Inc. and Verizon Advanced Data, Inc. to Return Certain Intrastate Advanced Data Services Assets from Verizon Advanced Data, Inc. to Verizon North Inc.* Case No. 01-2682-TP-UNC, (Finding and Order dated November 20, 2001) (copy attached as Exhibit 1). Verizon North Inc. subsequently became Frontier North Inc. as a result of the 2010 transfer of ownership of Verizon North Inc. from Verizon Communications Inc. to Frontier Communications Corporation. Answer ¶ 12. The VADI circuit referred to in the invoice was transferred to Frontier North Inc. as a result of that transfer of ownership.

MCICS did not send the termination letter attached to the Complaint as Exhibit A. As noted above, the “verizonbusiness” logo that appears on the termination letter refers generally to the many affiliates owned by Verizon Communications Inc. that provide telecommunications and other services to *business* customers – as opposed to *residential* customers. It does not refer specifically to MCICS, the interexchange carrier certificated in Ohio. Moreover, MCICS did not offer or provide the internet service referred to in the termination letter attached as Exhibit A to the Complaint – *i.e.*, “Verizon Internet Advantage” or “Internet Advantage” – either before or after the 2006 Verizon/MCI merger. MCICS never provided the service to OTC or billed OTC for this service because it was not an MCICS service.

MCICS is, therefore, not a necessary party to this proceeding. Indeed, it is not a proper party to this proceeding at all. MCICS has never provided services to OTC, has never billed OTC for services, has no records of the circuit number referred to in the invoice, and did not send the termination letter reflected in Exhibit A. Thus, OTC has not stated and cannot state a claim against MCICS. Apart from informing the Attorney Examiner of these facts, MCICS can shed no further light on the subject matter of this proceeding and, therefore, respectfully requests that the Complaint, as against MCICS, be dismissed with prejudice, and the MCICs be dismissed as a party to this proceeding

WHEREFORE, MCI Communications Services, Inc. d/b/a Verizon Business Services requests that its motion to dismiss with prejudice be granted.

Respectfully submitted,



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Attorney for
MCI Communications Services, Inc.
d/b/a Verizon Business Services

EXHIBIT 1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application for)
Approval of Verizon North, Inc. and Verizon)
Advanced Data, Inc. to Return Certain Intra-) Case No. 01-2682-TP-UNC
state Advanced Data Services Assets from)
Verizon Advanced Data, Inc. to Verizon)
North, Inc.)

FINDING AND ORDER

- (1) On December 7, 2000, in Case No. 00-1612-TP-UNC (00-1612), the Commission approved the purchase and transfer of certain advanced data services assets from Verizon North, Inc. (Verizon Ohio) to Verizon Advanced Data, Inc. (VAD). This transfer of assets was necessary in order to enable Verizon Ohio to meet one of the conditions set forth in the Federal Communications Commission's (FCC) June 16, 2000 order approving the merger between Bell Atlantic Corporation d.b.a. Verizon Corporation and GTE Corporation (CC Docket No. 98-184, Memorandum Opinion and Order, Para. 1, Appendix B). In its June 16, 2000 order, the FCC directed that certain advanced services could only be provided through an affiliate that was structurally separate from its own operating company. As a result, in order to provide advanced data services, VAD was established as a structurally separate affiliate to Verizon Ohio.
- (2) Pursuant to the Commission's approval of the application in 00-1612, all equipment and related assets used to provide advanced data services were purchased by and transferred to VAD at the higher of net book or fair market value pursuant to accepted affiliate pricing concepts. VAD adopted the tariffs of Verizon Ohio and also agreed that all Verizon Ohio existing customers would continue to receive advanced data services under the same terms and conditions offered by Verizon Ohio.
- (3) On October 17, 2001, as amended on November 1, 2001, Verizon Ohio and VAD filed the joint application in Case No. 01-2682-TP-UNC requesting the return of the advanced data services assets that were transferred in 00-1612 as a result of the FCC's order. Joint applicants state that, on January 9, 2001, in *Association of Communications Enterprises v. Federal Communications Commission*, 235 F. 3d 662 (D.C. Cir. 2001), the United States Court of Appeals for the District of Columbia (court) vacated the FCC's June 16, 2000 order requiring structural separation. According to the joint applicants, the court's order now gives Verizon Ohio the right to offer advanced data services without a separate affiliate and gives VAD the right to return any or all transferred assets to

Verizon Ohio. Joint applicants also contend that permitting Verizon Ohio to purchase the advanced data services assets from VAD, will return Verizon Ohio's operations to their status existing prior to the FCC's order and will conform Verizon Ohio's operations to the court's decision. Joint applicants further state that, as with the initial purchase and transfer of assets, VAD will return the assets to Verizon Ohio at net book value and in full compliance with applicable FCC rules and regulations.

- (4) Joint applicants submitted a proposed customer notice that explains the application and notes that the proposed transaction is to be completed in January 2002. Joint applicants also submitted proposed revised tariff pages for Verizon Ohio under which Verizon Ohio adopts the specific terms, conditions, and rates set forth in VAD's tariff.
- (5) After a thorough review, staff finds that the joint applicant's proposed revised tariff and customer notice are reasonable and recommends approval by the Commission.
- (6) Section 4905.48, Revised Code, provides that a public utility may purchase the property, plant, or business of any other public utility upon consent and approval of the Commission that the public will thereby be furnished adequate service for a reasonable and just rate, rental, toll, or charge. Verizon Ohio is a public utility as defined in Section 4905.02, Revised Code, and is engaged in the business of furnishing telecommunications services. VAD is similarly a public utility as defined in Section 4905.02, Revised Code, and is engaged in the business of furnishing advanced data services to customers in Ohio. Therefore, the proposed transaction falls under the jurisdiction of the Commission.
- (7) The Commission is satisfied that, as a result of the proposed purchase and transfer of assets, the public will be furnished adequate service for a reasonable and just rate. The joint application in this case requests approval of the purchase by Verizon Ohio of advanced data services from VAD that Verizon Ohio provided prior to the FCC's June 16, 2000 order. Furthermore, it appears that the provision of services to affected customers will be seamless including the assignment of the same terms and conditions for customer contracts from VAD to Verizon Ohio. Further, the return of the assets to Verizon Ohio will occur, like the initial transfer, at net book value and in full compliance with applicable FCC rules and regulations.

- (8) The Commission has reviewed the customer notice and finds it is reasonable and appropriate. The customer notice provides customers with information on the transfer of their service to Verizon Ohio and notice that the terms and conditions under which the customers obtain service will not change. The notice also explains the methods by which customers can contact Verizon Ohio with questions concerning this transfer of advanced data services. The Commission also finds that Verizon Ohio's proposed tariff should be approved. As a result of approving this application, VAD should be removed from the Commission's list of public utilities and its tariff and certificate should be cancelled.

It is, therefore,

ORDERED, That the joint application of Verizon Ohio and Verizon Advanced Data, Inc. for approval of the purchase and transfer of certain advanced data services assets is approved. It is, further,

ORDERED, That Verizon Ohio is authorized to file in final form three complete printed copies of its final tariff pages consistent with this finding and order. Verizon Ohio should file its final tariff pages under one cover letter that references this case number and its "TRF" case number. It is, further,

ORDERED, That the effective date of the new tariff language shall be a date not earlier than both the date of this finding and order and the date upon which three complete printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That nothing in this finding and order shall be binding upon this Commission in any further proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That Verizon Advanced Data, Inc. be removed from the Commission's list of public utilities and its tariff and certificate be cancelled. It is, further,

ORDERED, That this case be closed of record. It is, further,

ORDERED, That a copy of this finding and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



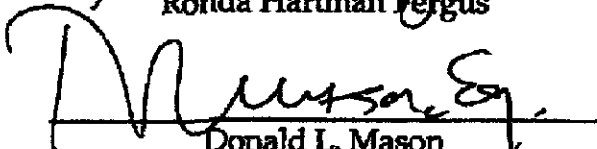
Alan R. Schriber, Chairman



Ronda Hartman Fergus



Judith A. Jones



Donald L. Mason

Clarence D. Rogers, Jr.

SEF:geb

Entered in the Journal

NOV 20 2001

A True Copy



Gay E. Vigorito
Secretary

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following parties by first class U.S. mail, postage prepaid, this 31st day of March 2011.


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