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June 15, 2006

By: *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 Application of Verizon North Inc. for Approval of An Elective Alternative Form of Regulation, Pursuant to Chapter 4901:1-4, Ohio Administrative Code, Public Utilities Commission of Ohio, Case No. 06-700-TP-ALT

Dear Ms. Jenkins:

Enclosed is an original and fourteen (14) copies of each of the following documents, to be filed on behalf of Verizon North Inc., in connection with the above-referenced matter:

1. Memorandum of Verizon North Inc. in Opposition to OCC's Motion to Intervene;
and
2. Response of Verizon North Inc. to Protest of Application and Request for Hearing
(with supporting Affidavits) of the Office of the Ohio Consumers' Counsel.

Thank you for your assistance. If you have any question, please feel free to call.

Respectfully yours,

Carolyn S. Flahive

cc: Allen Francis, Chief, Utilities Dept.
Jeffrey R. Jones, Chief, Telephone Section
David C. Bergmann, Esq.
A. Randall Vogelzang, Esq.
Thomas E Lodge, Esq.

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Enclosures

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Verizon)
North Inc. for Approval of an Elective)
Alternative Form of Regulation, Pursuant to) Case No. 06-700-TP-ALT
Chapter 4901:1-4, Ohio Administrative Code)

**MEMORANDUM OF VERIZON NORTH INC.
IN OPPOSITION TO OCC'S MOTION TO INTERVENE**

On June 1, 2006, the Ohio Consumers' Counsel ("OCC") filed a motion to intervene ("OCC's Motion"). OCC's Motion contends that OCC qualifies for intervention under §4901-1-11(B), O.A.C. For the following reasons, Verizon North Inc. ("Verizon") submits that OCC's Motion should be overruled.

ARGUMENT

Ohio Rev. Code §4903.221(B) sets forth four criteria to consider when evaluating a request for permissive intervention. They are:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

OCC's Motion restates these criteria but supplies only a summary statement the "OCC meets the criteria." OCC's Motion at 4. OCC is incorrect.

A. OCC's Interest In This Proceeding Is To Renew Its Objections To The Commission's Determinations In Case No. 00-1532

The "Protest of Application" filed concurrently with OCC's Motion makes clear that the "interest" OCC seeks to litigate here is in fact the relitigation of Case No. 00-1532. OCC's Protest is replete with references to the state of competition in Verizon's service area and to the availability of various alternatives there. Verizon will show in its Response to the Protest, however, that those issues have long since been determined irrelevant by the Supreme Court of Ohio. OCC's "interest," therefore, is not one that qualifies it for intervention here and should not be recognized in this proceeding.

B. The Commission and the Supreme Court of Ohio Have Already Rejected The Legal Position Advanced By OCC As Being Irrelevant To The Merits Of An Application For Approval Of An Alt Reg Plan.

The OCC is making the same evidentiary arguments in its Motion and corresponding Protest that it made, and that the Supreme Court of Ohio rejected, in its review of the 00-1532 case. *Stephens v. Pub. Util. Comm.*, 102 Ohio St.3d 44, 49, 2004-Ohio-1798.¹ As a result, the legal position advanced by the OCC here has been determined by the Supreme Court of Ohio to be inappropriate, and provides no legal support to OCC's protest.. Accordingly, the second criterion for permissive intervention does not support OCC's request.

C. OCC Seeks to Unduly Prolong and Delay This Proceeding.

A key element of the elective alt reg plan available under Rule 4901:1-4, O.A.C., is the speed with which automatic approval may be obtained. Division (B) and (E) of Rule 4901:1-4-02 provide that an application shall be automatically approved on the 46th day

¹ "Suffice it to say that OCC's evidentiary arguments are just that: they deal with the propriety, adequacy, and weight of the evidence supporting the commission's decisions. {¶ 16} It is apparent from OCC's arguments that he is asking this court to examine in minute detail the record below and to weigh the evidence. We decline to do so. . . . The commission's findings and decisions in the matters on appeal were not manifestly against the weight of the evidence. Therefore, OCC's evidentiary arguments fail."

after the filing absent either suspension by the Commission or a hearing that is held under a request supported by clear and convincing evidence that “extraordinary circumstances” exist causing grounds for a hearing. By specifically defining the requirements of an appropriate application in Ohio Admin. Code 4901:1-4 (including a plan as to how the applicant will meet all of the commitments required by Ohio Admin. Code § 4901:1-4-05), the Commission’s clear intent was to devise a process that would enable an ILEC to elect alternative regulation without the need for lengthy negotiations, protracted and expensive hearings, and potential results significantly different from the alternative regulation plan originally proposed by the ILEC.

OCC’s purpose for intervening is to derail the adoption of “off the shelf” elective alt reg plans by Verizon. OCC is opposed to the very existence of the alternative-regulation process and its real interest is to do whatever it can in an effort to impede it. The purpose of OCC’s intervention is self-evidently to prolong and delay this proceeding. That is not acceptable grounds for intervention. Consequently, OCC’s intervention is in direct conflict with the third permissive intervention criterion.

D. There Are No Factual Issues To Develop In This Case Other Than Whether Or Not Verizon’s Application Complies with Ohio Admin. Code §4901:1-4.

Ohio Admin. Code 4901:1-4 specifically defines the requirements of an appropriate application for elective alt reg (including a plan as to how the applicant will meet all of the commitments required by Ohio Admin. Code § 4901:1-4-05). If an applicant’s plan complies with the rules, it may enter into its alt reg plan 46 days after filing its application. Consequently, OCC will not significantly contribute to full development and equitable resolution of factual issues because none exist.

The assertions of OCC’s Protest – relating to alleged service-quality issues and the state of competition in Verizon’s service area – are simply not relevant to adoption of alternative regulation. Indeed, the Commission adopted rules that purposely incorporated these factual

decisions concerning competition up front so that these issues would not need to be relitigated each time an ILEC sought approval of an elective alt reg plan. The Commission also purposely excluded all other issues – except those relating to the Commitments addressed in the Application. OCC's contentions do nothing to contradict those commitments. OCC, as a result, does not meet the fourth criterion for permissive intervention because it will not make any contribution to the factual record.

CONCLUSION

OCC's Motion seeks precisely what the Commission's 00-1532 orders and related rules sought to avoid: disruption and disincentive from pursuing alternative regulation. As a result, the rules provide for an "off the shelf" alternative regulation plan that could be readily and successfully adopted. OCC's Motion is trying to frustrate this process and OCC should not be permitted to intervene in this case.

Respectfully submitted,

VERIZON NORTH INC.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed below, by ordinary U.S. Mail, postage prepaid, this 15th day of June, 2006.



Carolyn S. Flahive

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