

FILE

CENTURYTEL personal touch ■ advanced communications

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December 7, 2007

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

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PUCO

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

Dear Ms. Jenkins:

Enclosed for filing please find an original and fifteen (15) copies of CenturyTel of Ohio, Inc.'s Reply Memorandum In Support of Motion to Dismiss.
Thank you for your assistance. If you have any questions, please feel free to call.

Very truly yours,



Calvin K. Simshaw
Assoc. General Counsel-Regulatory

cc: All Parties of Record

Enclosures

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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 dba Verizon)
Communications Services, Inc. dba Verizon)
Business Services, Teleconnect Long)
Distance Services & Systems Co. dba)
Telecom USA, TTI National Inc., Bell)
Atlantic Communications Inc. dba)
Verizon Long Distance, NYNEX Long)
Distance Company dba Verizon)
Enterprise Solutions, and Verizon Select)
Services Inc., dba GTE Long Distance,)
)
Complainants)
v.)
)
CenturyTel of Ohio, Inc., Windstream)
Ohio, Inc., and Windstream Western)
Reserve, Inc.,)
)
Respondents)
)

Case No. 07-1100-TP-CSS

CenturyTel of Ohio, Inc.'s Reply Memorandum In Support of Motion to Dismiss

CenturyTel of Ohio, Inc. ("CenturyTel") hereby submits this reply memorandum in support of its motion to dismiss Verizon's complaint in this matter. As discussed in this memorandum, the arguments in Verizon's memorandum contra to the motion to dismiss fail to overcome the fact that Verizon's complaint fails to state "reasonable grounds" for complaint under Section 4905.26, Revised Code. Verizon's complaint in this matter should be dismissed.

I Verizon fails to make allegations that would support a finding that CenturyTel's access rates are unjust or unreasonable.

As noted in Verizon's Memorandum Contra the Motions to Dismiss of CenturyTel and Windstream ("Verizon's Memorandum"), Verizon relies on two factual allegations for the proposition that CenturyTel's intrastate access charges are unjust and unreasonable. Verizon alleges that CenturyTel and Windstream's intrastate switched access rates are higher than the rates of the larger ILECs in Ohio (Verizon Memorandum at page 4). Verizon also alleges that there is a disparity between CenturyTel and Windstream's intrastate switched access rates and their interstate rates (Verizon Memorandum at page 4). These allegations do not present "reasonable grounds" for complaint under Section 4905.26, Revised Code.

Verizon has merely pointed out that CenturyTel and Windstream's intrastate switched access rates are not the same as the rates of the larger Ohio ILECs and that they are not the same as CenturyTel and Windstream's interstate rates. Verizon's allegations in this regard would establish unjustness or unreasonableness only if there was a rule that stated that CenturyTel and Windstream's intrastate switched access rates had to be the same as the rates of the larger Ohio ILECs or had to be the same as CenturyTel and Windstream's interstate rates. There is no such rule or Commission policy as applies to the intrastate switched access rates of CenturyTel and Windstream.

In an attempt to lend some significance to its allegations, Verizon mischaracterizes the Commission's policy with regard to intrastate switched access rates. At page 2 of its memorandum, Verizon states that "the Commission has determined that requiring Ohio telephone companies to mirror interstate switched access rates is

reasonable and beneficial to Ohio consumers ...” Verizon attempts to state an all inclusive Commission policy where none exists. The fact is that the Commission has purposely not required all Ohio telephone companies to mirror interstate switched access rates and has not determined that such action would always be in the interest of Ohio consumers.

In Case No. 00-127-TP-COI, *In the Matter of the Commission's Investigation into the Modification of Intrastate Access Charges*, the Commission did require that the larger Ohio ILECs, Ameritech Ohio (now AT&T Ohio), Cincinnati Bell Telephone Company, Sprint/United (now Embarq), and Verizon mirror their interstate switched access rates. (Case No. 00-127-TP-COI, Opinion and Order issued January 11, 2001, the “Access Order”). However in that same order the Commission specifically declined to require that CenturyTel, Windstream or any of the other smaller Ohio ILECs mirror interstate switched access rates.

In the Access Order the Commission stated:

Additionally, we must also acknowledge that changes in access levels can raise concerns over revenue streams that support affordable local exchange service. (Access Order, at page 13)

Unless one concludes that Ohio consumers have no concern for “affordable local exchange service,” it cannot be said that the Commission has a policy that mirroring interstate switched access rates is beneficial to Ohio consumers in all instances.

Clearly there is no established Commission policy that requires that the intrastate switched access rates of CenturyTel and Windstream mirror the interstate rates of those companies. In the absence of a rule or policy that says they have to be the same, there is no significance in alleging that they are not the same.

Nor is there any significance to Verizon's allegation that CenturyTel and Windstream's intrastate switched access rates are higher than the rates of the larger Ohio ILECs. In the Access Order the Commission specifically determined that the intrastate switched access rates of CenturyTel, Windstream and the other smaller Ohio ILECs would be treated differently than the rates of the larger Ohio ILECs (Access Order, at page 17). There simply is no rule or Commission policy that requires that CenturyTel and Windstream's intrastate switched access rates be the same as the rates of the larger Ohio ILECs. In the absence of a rule or policy that says they have to be the same, there is no significance in alleging that they are not the same.

Verizon has alleged that CenturyTel and Windstream's intrastate switched access rates are not the same as the rates of the larger Ohio ILECs and that they are not the same as CenturyTel and Windstream's interstate rates. These allegations do not establish that CenturyTel and Windstream's rates are inconsistent with Commission rules or policy. Therefore the allegations do not establish that such rates are unjust and unreasonable. These are the only material allegations in Verizon's complaint. Therefore the complaint fails to establish "reasonable grounds" under Section 4905.26, Revised Code and the complaint should be dismissed.

II. Incomplete allegations is also grounds for dismissal

The previous section of this reply discussed the allegations that Verizon made in its complaint. Also important is what Verizon does not allege. The Commission has historically held that when there are multiple elements necessary for an evaluation of the justness and reasonableness of rates, the complainant must make allegations with respect

to all of those elements. In its decision in *OCC v. West Ohio Gas Co.*, the Commission stated that:

However, in all cases, if the complaint is to meet the “reasonable grounds” test, it must contain allegations, which, if true, would support the finding that the rates, practices or services complained of are unreasonable or unlawful. To permit a complaint to proceed to hearing when complainant has failed to allege one or more elements necessary to a finding of unreasonableness or unlawfulness would improperly alter both the scope and burden of proof.¹

In the West Ohio Gas case the Commission was specifically addressing the allegations necessary to set the matter for hearing pursuant to Section 4905.26, Revised Code. The Commission concluded that elements necessary to a finding of unreasonableness must be alleged in the complaint. As the Commission stated, “This is what OCC must prove if it is to prevail, therefore, the complaint must contain this allegation.”² Clearly all elements necessary to a finding of unreasonableness must be alleged in the complaint and can not be deferred for identification and allegation at the hearing.

As noted earlier in this reply, the Commission has determined that the reasonableness of intrastate switched access rates must be determined in part by their impact on the affordability of local service.

Additionally, we must also acknowledge that changes in access levels can raise concerns over revenue streams that support affordable local exchange service. (Access Order, at page 13)

Verizon cannot deny this linkage between reasonable intrastate switched access rates and their impact on affordable local service rates. In fact Verizon has historically highlighted the importance of this linkage.

¹ *In the Matter of the Complaint of the Office of Consumer’s Counsel, state of Ohio, on behalf of the residential customers of West Ohio Gas Company, Complainant v. West Ohio Gas Company, Respondent, Relative to unjust and unreasonable rates*, 88-1743-GA-CSS, 1989 Ohio PUC Lexis 104, (*16).

² *Id* at (*19)

Access charge reform is inextricably linked to the existing level of end user retail rates due to the presence of implicit subsidies. (Verizon's Application for Rehearing submitted February 3, 2003 in Case No. 00-127-TP-COI, at page 9).

Yet, in its complaint, Verizon fails to make any allegation as to the impact that CenturyTel and Windstream intrastate switched access rates have on affordable local service rates, or, for that matter, what impact the access rates that Verizon is proposing would have on affordable rates for local service. The reasonableness of CenturyTel and Windstream's current intrastate switched access rates as well as the rates that Verizon is suggesting they be replaced with must be measured in part by their impact upon the affordability of rates for local service. Verizon's complaint makes no allegations as to this element of reasonableness.

Instead, Verizon seeks to brush aside any such impact. At page 3 of its Memorandum, Verizon refers to such universal service concerns as a "red herring." Verizon refers to these concerns as "fact-intensive defenses" (Verizon Memorandum at page 5) or "fact-based defenses" (Verizon Memorandum at page 9) and states that such factual issues "can be explored as this case proceeds: that issues of fact may exist is not a ground for dismissing the complaint" (Verizon Memorandum at page 9). Verizon is mistaken. Such factual issues can be a grounds for dismissing the complaint if, as here, they are a necessary element of determining the reasonableness of the rates at issue and the complainant fails to allege them. *OCC v. West Ohio Gas Co.*³ Nor can Verizon suggest that, rather than being alleged in the complaint, such element can be explored as the case proceeds. As the Commission has previously held, deferring allegation of a

³ *Id* at (*16)

necessary element of the complaint would “improperly alter both the scope and burden of proof” of the hearing. *OCC v. West Ohio Gas Co.*⁴

Rather than make an allegation specifically addressing impacts on affordability of rates for local service, Verizon makes only a conclusionary statement that access charge reductions would benefit some unidentified group of consumers. One can only assume that Verizon is referring to consumers of intrastate long distance calling. However, Verizon makes no allegation that its affiliates or any other IXC's will pass along to their customers the cost reductions resulting from reduced access charges. Without an allegation that there will be a pass through in the form of reductions to customers' toll rates, an assertion that consumers will benefit is meaningless.

Evaluation of impacts on consumers, including long distance customers, but especially local service customers is a necessary element of any finding pertaining to reasonableness of intrastate switched access rates. Verizon has failed to allege this necessary element and therefore has failed to establish “reasonable grounds” under the guidelines established by the Commission in *OCC v. West Ohio Gas Co.*

Conclusion

Verizon's complaint should be dismissed as it fails to state a claim for which relief can be granted under Section 4905.26, Revised Code. The limited allegations in Verizon's complaint provide no basis for a conclusion that CenturyTel or Windstream's intrastate switched access rates are unjust or unreasonable. Verizon has merely alleged that CenturyTel and Windstream's rates are not the same as their interstate rates and are not the same as the rates of the larger ILECs in Ohio. There is no Commission rule or

⁴ *Id* at (*16)

policy that requires such rates to be the same. Therefore Verizon has failed to make allegations that present "reasonable grounds" for complaint under the statute.

Both the Commission and Verizon have historically recognized the linkage between access charge reductions and the affordability of rates for local exchange service. However Verizon has omitted any allegations concerning impacts on rates for local service and has therefore failed to allege a necessary element of any finding of reasonableness. Incomplete allegations are grounds for dismissal of a complaint under Section 4905.26, Revised Code. Verizon's allegations are incomplete and its complaint should be dismissed.

Respectfully submitted this 7th day of December 2007.

CENTURYTEL OF OHIO, Inc.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of CenturyTel of Ohio, Inc.'s Motion to Dismiss and Supporting Memorandum in Case No. 07-1100-TP-CSS, was served upon the parties of record indicated on the attached service list the 7th day of December, 2007, via U.S. mail, postage prepaid.



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