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January 28, 2008

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

PUCO

2008 JAN 28 PM 3:24

RECEIVED-DOCKETING DIV

RE: In the Matter of the Amendment of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code,  
PUCO Case No. 00-1265-TP-ORD

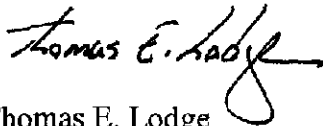
In the Matter of the Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio and Verizon North Inc. Relating to the Minimum Telephone Service Standards, PUCO Case No. 07-511-TP-UNC

Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of the Response of Verizon North Inc. to January 24, 2008 Staff Report, to be filed in connection with the above-referenced matter.

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

Respectfully yours,



Thomas E. Lodge

cc: Alan R. Schriber, Chairman  
Ronda Hartman Fergus, Commissioner  
Paul Centolella, Commissioner  
Donald L. Mason, Commissioner  
Valerie A. Lemmie, Commissioner  
Steve Lesser, Chief of Staff  
Jeffrey R. Jones, Chief Telephone & Water Section  
Paul Duffy, Director  
Doris McCarter, Department Director  
Service Monitoring & Enforcement  
A. Randall Vogelzang, Esq.  
All Parties of Record

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Amendment of the</b>	)	
<b>Minimum Telephone Service Standards</b>	)	<b>Case No. 00-1265-TP-ORD</b>
<b>As Set Forth in Chapter 4901:1-5 of the</b>	)	
<b>Ohio Administrative Code.</b>	)	

<b>In the Matter of the Settlement Agreement</b>	)	
<b>Between the Staff of the Public Utilities</b>	)	<b>Case No. 07-0511-TP-UNC</b>
<b>Commission of Ohio and Verizon North Inc.</b>	)	
<b>Relating to the Minimum Telephone Service</b>	)	
<b>Standards.</b>	)	

**RESPONSE OF VERIZON NORTH INC. TO**  
**JANUARY 24, 2008 STAFF REPORT**

**A. Introduction**

The Staff Report is arbitrary, unreasonable, unlawful and fundamentally unfair. It applies the wrong MTSS rule to its evaluation of Verizon's request, fails to follow the requirements of the wrong rule even if it were applicable, proposes to violate the Stipulation<sup>1</sup> and incorrectly concludes that the extraordinarily high amount of service requests that Verizon experienced in August, 2007 was reasonable. Clearly, a 300% to 1233% increase in trouble-tickets during a governmental disaster declaration justifies a grant of Verizon's application. The Commission should reject the recommendations of the Staff Report.

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<sup>1</sup> Stipulation filed in Case No. 07-0511-TP-UNC on April 30, 2007, and approved by the Commission's Finding and Order of May 2, 2007 and Entry on Rehearing of June 27, 2007 ("the Stipulation").

**B. The Staff Report's proposal to evaluate Verizon's application for exemption under Ohio Administrative Code 4901:1-5-16 (C) is arbitrary, unreasonable, unlawful and fundamentally unfair.**

**1. Staff's Report applies the wrong MTSS rule to Verizon's application for exemption.**

Verizon North Inc. ("Verizon") filed an Application for a Limited Exception of Ohio Administrative Code §4901:1-5-02(D) on October 23, 2007. This rule, referred to as the "Hardship Exemption Rule," provides:

(D) If unreasonable hardship to a telecommunications provider . . . results from the application of any provision of this chapter, an application may be made to the commission for the temporary or permanent exemption from any such provision. Such application shall be accompanied with a memorandum supporting such request.

Verizon seeks a limited exemption under the Hardship Exemption Rule from the application of Ohio Administrative Code 4901:1-5-20(B)(4) to clear out-of-service ("OOS") trouble in 24 hours (the "OOS in 24 Rule") during the nine-day period of the August storms, from August 20, 2007 through August 29, 2007. Specifically, Verizon seeks the exemption for 153 repair tickets that Verizon could not process because the unusually severe weather during that period in Northern Ohio prevented Verizon from completing them. The exceptionally severe nature of these storms in Northern Ohio is well documented. Nine counties in Northern Ohio were declared a disaster by the Governor because the incident was of such severity that "it was beyond the capabilities of the State of Ohio," but the storms ravaged all of Northern Ohio; in fact, on August 24, 2007, the Ohio Emergency Centers issued a news release stating that 27 Ohio counties were affected by the storms. See Exhibit 1 hereto.

However, the Staff Report did not analyze Verizon's request under the Hardship Exemption Rule. Instead, it used a completely different rule -- Ohio Administrative Code

4901:1-5-16(D), the “48-Hour Grace Period Rule.” The Staff Report did not mention the rule under which Verizon actually filed, nor did it cite or discuss the requirements for a waiver under the Hardship Exemption Rule. As noted, Verizon is not seeking an Act of God Waiver for OOS customer credits or seeking to invoke the 24 Hour Grace Period Rule, and it was wrong for the Staff Report to evaluate Verizon’s request as if it had filed under that rule.

Verizon filed for a general MTSS rule exemption under the Hardship Exemption Rule (4901:1: 5-20 (B)), which simply requires a demonstration that application of the rule would cause an unreasonable hardship to Verizon. Verizon has done that. Because the Hardship Exemption Rule does not specify what amount of increase in trouble tickets would be considered “unreasonable,” Verizon’s Application for Limited Exemption suggested that the 300% trouble-ticket increase, or the governmental disaster declaration that automatically triggers a waiver under the 48-hour Grace Period Rule, would provide a proper basis for waiver under the Hardship Exemption Rule.

Apparently, because Verizon mentioned the 48-hour Grace Period Rule as an example of an existing standard where waivers have been granted, the Staff Report incorrectly analyzed the Hardship Exemption Rule request as a waiver under the 48-Hour Grace Period Rule. That was the wrong evaluation. The requirements for an exemption under the Hardship Exemption Rule are different from those for a waiver under the 48-Hour Grace Period Rule. The test under the Hardship Exemption Rule is simply whether the increase in repair tickets during the August storms was an unreasonable increase, so as to support a finding that application of the rule would be an unreasonable hardship on Verizon. Clearly, under the circumstance of the August, 2007 storms, it would be an unreasonable hardship to hold Verizon to normal service metrics when trouble tickets

during those unusually extreme storms had spiked to between 300% - 1233% above normal loads. Verizon took extraordinary efforts to meet the metrics during this period, transferring employees, including volunteers, from other parts of the company to help in the affected areas, using overtime, working 12-hour days, and cancelling vacations. See Application for Limited Exemption at 3. Yet, when storms prevent work on damaged facilities, no extraordinary amount of effort will allow the work to be performed.

Verizon's Application for Limited Exemption was appropriate and authorized by Ohio law.<sup>2</sup>

**2. Even if a Waiver Under the 48-hour Grace Period Rule Had Been Requested, It Would Have Been Automatically Granted**

The Staff Report's evaluation of Verizon's Hardship Exemption Rule request under the 48-Hour Grace Period Rule not only applies the wrong rule, it does not consider the entire rule. The Staff Report lists four (4) criteria that must be satisfied before a waiver under that rule can be approved. Staff Report at 2-3. However, there are five (5). The Staff Report fails to mention that the Rule provides for an automatic waiver if the Commission does not reject the application in 45 days. Subpart 4 of the 48-hour Grace Period Rule, which the Staff Report omits, states:

If the Commission . . . does not act to suspend or reject the request for a grace period within forty-five days of the filing of the request, the request for the grace period will be presumed granted.

Here, Verizon filed its request for an exemption on October 23, 2007. The Staff Report was not filed until January 24, 2008, or 93 days later. If Verizon had filed for a 48-Hour

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<sup>2</sup> Because the Hardship Exemption Rule supplies no standard other than "unreasonable hardship," and because Revised Code §4905.231 confers discretion on the Commission's establishment and definition of minimum telephone service standards, the Commission has authority to waive its rules if the public interest is not adversely affected. *See Columbus Motor Exp. V. Pub. Util. Comm'n* (1932) 126 Ohio St. 11, 12. Plainly, as demonstrated by the Application For Limited Exemption, such is the case here,

Grace Period waiver, or if that rule is to be followed here, Verizon has met the criteria for a waiver and the recommendation of the Staff Report should be rejected. If Verizon's Application for Limited Exemption should be analyzed under the 48-hour Grace Period Rule as the Staff Report incorrectly concludes, then the whole rule must be used. Failure to follow the complete rule would be arbitrary, unreasonable, and unlawful. If the complete rule is applied to Verizon's request, the exemption has already been granted.

**3. The Staff Report also incorrectly represents the mechanism under the Stipulation to consider any abated forfeitures.**

The Staff Report states that if the Norwalk District performance level is not adjusted, then the \$250,000 forfeiture now held in abeyance under the Stipulation for OOS in 24 performance is due. Staff Report at 4. This conclusion is incorrect and violates the Stipulation. The Stipulation provides for an evaluation period after the Stipulation term has ended, and any determination prior to Verizon's performance under the full period of the agreement would be contrary to the Stipulation. Section IV of the Stipulation is entitled "Evaluation of Verizon's Performance" and it provides:

If Verizon meets the performance standards set forth in Section III above, Verizon will be deemed to be in full compliance with the MTSS relating to OOS/NOOS and installations. The payment of the forfeiture referenced in Section III.b. above shall be deemed to resolve all outstanding issues regarding Verizon's pre-May 2007 compliance with the OOS/NOOS and installation service intervals and appointments contained within the MTSS requirements.

Further, Section III (b) of the Stipulation states that "unless the Commission finds that the level of Verizon's OOS performance under this Stipulation is not maintained, this additional forfeiture will be waived and no payment thereof will be required." (Emphasis added).

Clearly, these provisions require an evaluation of Verizon's performance "under this Stipulation" to be conducted after the end of the Stipulation period. Otherwise, the evaluation would only be under part of the Stipulation, and would be considering only partial performance. The words "under the stipulation" must mean under the whole Stipulation, not just part of it. Therefore, it is premature to conduct an evaluation of Verizon's performance "under the Stipulation" when the Stipulation has not concluded.

### **C. CONCLUSION**

The Staff Report's proposal to evaluate Verizon's Hardship Exemption Rule request under a different Commission rule would be arbitrary, unreasonable, unlawful and unfair. This is especially true since even under that rule Verizon would automatically qualify for a waiver. It would also violate the Stipulation.

If partial exemption is not granted, a 300% to 1233% increase in trouble reports experienced during an unusually severe weather event during August, 2007 plainly constitutes an unreasonable hardship. It is an unreasonably excessive level of performance to meet, and the severe nature of the storms is well known to anyone living in Ohio during that period. Even though it does not govern this request, the Commission has already determined in its 48-Hour Grace Period Rule, that increases in repair orders of over 300% merit a waiver. Thus, it is reasonable to conclude that the extraordinary high levels of repair orders would be an unreasonable hardship, entitling Verizon to an exemption under the Hardship Exemption Rule.

Even if the Commission now decides that 300% to 1233% increases in repair orders are reasonable, the Commission should abide by the Stipulation it has already

approved, and should evaluate Verizon's performance and application of any forfeitures in abeyance at the end of the Stipulation period.

WHEREFORE, Verizon requests that the Commission approve Verizon's request for exemption.

Respectfully submitted,

Verizon North Inc.

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**STATE OF OHIO****Emergency Operations Center****NEWS RELEASE**[www.ema.ohio.gov](http://www.ema.ohio.gov)

Ted Strickland, Governor

2855 W. Dublin Granville Rd.  
Columbus, Ohio 43235**FOR IMMEDIATE RELEASE****August 24, 2007****CONTACT:** Tom Hunter, ODPS, (614) 403-0302

C.J. Couch, Ohio EMA, (614) 582-9801

**RECOVERY EFFORTS CONTINUE IN AFFECTED FLOOD AREAS**

**COLUMBUS** – As floodwaters recede throughout northern Ohio, local and state agencies, in partnership with volunteer organizations, are continuing their efforts to help residents and businesses recover from severe flooding. Since Aug. 20, the state's Emergency Operations Center has been receiving reports from 27 counties affected by storms that have dumped as much as 15 inches of rain throughout central and northern Ohio. Governor Ted Strickland declared a state of emergency for nine northern Ohio counties: Allen, Crawford, Hancock, Hardin, Putnam, Richland, Seneca, Van Wert and Wyandot, on Aug. 22.

Yesterday, Governor Strickland joined U.S. Department of Homeland Security Secretary Michael Chertoff and Federal Emergency Management Agency Administrator David Paulison for a tour of flood affected areas in the downtown business district of Findlay. After his visit to Findlay, Governor Strickland joined U.S. Senator Sherrod Brown, U.S. Representatives Paul Gilmour, Marcy Kaptur and Jim Jordan; Ohio State Senator Steve Bucher, Ohio Department of Public Safety Director Henry Guzmán, Ohio Adjutant General Greg Wayt and Ohio EMA Operations Division Director Mel House for a helicopter tour of flood affected areas in Hancock, Wyandot and Crawford counties. The delegation met with residents and business owners in Findlay and Bucyrus, assuring them that local, state and federal agencies will work together to bring comfort and support during these difficult times.

As of Noon today, the state Emergency Operations Center provided the following update:

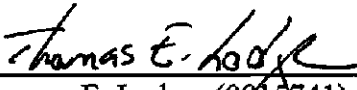
- County, state and federal emergency management officials will begin to conduct Preliminary Damage Assessments, tomorrow in the following counties: Crawford, Hancock, Putnam, Richland and Wyandot;
- Electricity has been restored throughout the region;
- The American Red Cross and Ohio Voluntary Organizations Active in Disasters (VOAD) are continuing to provide shelters, service centers and feeding stations in the following counties: Crawford, Hancock, Ottawa and Putnam.

County and state agencies have begun efforts to ensure debris created by the flooding is removed from the impacted areas. Residents need to make certain that debris (damaged household items, carpeting, appliances, furniture, etc) is placed along the curbside or next to roadway within the public right-of-way. Debris teams can not remove items located next to homes/private property.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon all parties listed on the attached Service List, via ordinary U.S. mail, this 28<sup>th</sup> day of January, 2008.

  
\_\_\_\_\_  
Thomas E. Lodge (0015741)

**SERVICE LIST**  
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**Case No. 07-0511-TP-UNC**

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