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FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio and Verizon North Inc. Relating to the Minimum Telephone Service Standards.	)	Case No. 07-511-TP-UNC
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.	)	Case No. 00-1265-TP-ORD

COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On October 23, 2007, Verizon North, Inc. ("Verizon") filed with the Public Utilities Commission of Ohio ("Commission" or "PUCO") an application seeking an exemption from Ohio Adm. Code 4901:1-5-20(B)(4).[1] Citing severe weather in northern Ohio as the basis for the Application,[2] Verizon sought to be excused from the requirement that local service providers clear customers' out-of-service problems within

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[1] Case No. 00-1265-TP-ORD, Verizon North, Inc.'s Application for Limited Exemption of Ohio Administrative Code §4901:1-5-20(B)(4) (October 23, 2007) ("Application").

[2] Id. at 3.

24 hours in as many as 32 exchanges during August 21-29, 2007.[3] Verizon did not meet the standard for 153 out-of-service conditions in these exchanges during that period.[4]

The PUCO Staff addressed the Application in a Staff Report Concerning Verizon North, Inc. ("Staff Report") filed on January 24, 2008. The Staff Report concluded that Verizon does not meet the new standard for weather-related exceptions to the Minimum Telephone Service Standards ("MTSS"),[5] which Verizon asserted as "precedential guidance" for considering the Application.[6] The Staff Report thus recommends that the Commission deny the Application.[7] In addition, if the PUCO's decision results in Verizon failing to meet the out-of-service performance benchmarks of the Stipulation between Verizon and PUCO Staff in Case No. 07-511,[8] the Staff Report recommends that the Commission find that Verizon has failed to meet its performance commitment under the Stipulation and that Verizon must pay a $250,000 forfeiture under the Stipulation.[9]

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor on behalf of residential telephone customers,[10] concurs with the Staff Report's recommendation that Verizon's Application should be denied. But the assessment of a forfeiture against

[3] The Application listed 28 exchanges: Antwerp, Attica, Carey, Clyde, Crestline, Curtice-Oregon, Edgerton, Edon, Elmore, Evansport, Fayette, Galion, Gibsonburg, Haskins-Tontogany, Helena, Hicksville, Loudonville, McComb, Montpelier, Ney, North Baltimore, Pioneer, Port Clinton, Put in Bay, Scott, Wayne-Bradner, West Unity and Weston. Application at 4. See also Staff Report at 1. Exhibit 1 to the Application listed an additional four exchanges: Bettsville, Bloomville, Bryan and Republic.

[4] See Application, Exhibit 1.

[5] Staff Report at 2-4.

[6] Application at 6.

[7] Staff Report at 4.

[8] Stipulation (April 30, 2007). The Commission approved the Stipulation in a Finding and Order adopted on May 2, 2007 ("07-511 Order"). As discussed in Section III, the Stipulation contained benchmarks for Verizon to meet regarding installation and repair of its customers' service.

[9] Staff Report at 4.

[10] OCC was granted intervention in the 07-511 Order (at 5). OCC has legislative authority to represent the residential utility consumers of Ohio pursuant to Chapter 4911 of the Ohio Revised Code.

Verizon should not hinge on the Commission's action on the Application. As the Staff Report noted, Verizon also failed to meet the Stipulation's out-of-service benchmark for protecting customers in the Portsmouth District during December 2007.[11] Thus, under the Stipulation, the PUCO should assess the additional $250,000 forfeiture against Verizon.

II. VERIZON DOES NOT MEET THE STANDARD THAT IT OFFERED AS "PRECEDENTIAL GUIDANCE" FOR PROVIDING MINIMUM SERVICE TO OHIO CUSTOMERS.

In the Application, Verizon sought an exemption from former Ohio Adm. Code 4901:1-5-20(B)(4), which requires local exchange companies to "clear out-of-service trouble reports within 24 hours, excluding Sundays and holidays, following receipt of the report."[12] Verizon sought the exemption under former Ohio Adm. Code 4901:1-5-02(D), which allowed telecommunications companies to seek a temporary or permanent exemption from any MTSS provision if application of the provision results in "unreasonable hardship to [the] provider or to a subscriber...."[13] Verizon noted that the former rule "does not specifically define the showing for such an exemption...."[14]

Verizon, however, suggested that the Commission find "precedential guidance" in the newly-adopted rule concerning a weather-related grace period for excusing providers

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[11] Id. at 2.

[12] Effective January 1, 2008, this provision was replaced by Ohio Adm. Code 4901:1-5-08(B)(5), which requires local exchange carriers to "[c]lear out-of-service trouble reports within twenty-four hours of receipt of the report, excluding Sundays and holidays." See *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*, Case No. 05-1102-TP-ORD, Opinion and Order (February 7, 2007) ("05-1102 Order"), adopted 4901:1-5-08(B)(5).

[13] Application at 6. The "unreasonable hardship" exemption is not in the new MTSS, which became effective January 1, 2008. See 05-1102 Order. In what is an unfortunate irony for Ohio customers, Verizon would use the occasion of outages that are a hardship for customers to claim that it has suffered an "unreasonable hardship" under the PUCO's service standard.

[14] Application at 6.

from the obligation to pay customers out-of-service credits.[15] The rule – Ohio Adm. Code 4901:1-5-08(D), effective January 1, 2008 – allows a local exchange carrier a grace period for paying customer credits if the carrier was unable to make repairs "due to an extreme, unique, or unforeseeable weather-related incident." Because the former hardship rule contained no formal criteria for considering a hardship waiver request, the PUCO Staff agrees that the standards under Ohio Adm. Code 4901:1-5-08(D) are appropriate for addressing Verizon's Application.[16]

Verizon noted that a grace period may be requested under the new rule if there is either at least a three hundred per cent increase of the number of out-of-service reports in an exchange as compared to the average number of out-of-service reports for the affected month(s) of the three previous years, or any declaration of a state of emergency by the governor or a duly authorized county official for the county in which the exchange is located.[17] Verizon, however, did not mention a key limitation to the grace period provision: "Exchanges with ten or fewer daily out-of-service reports during the requested grace period are not eligible for this grace period."[18] The Application did not give any reason why this limitation would be inappropriate. Thus, because Verizon intended for the Commission to use the grace period rule as "precedential guidance" for acting on the

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[15] Id.

[16] Staff Report at 2. Verizon apparently has provided all affected customers with the appropriate service credits. Id. at 1.

[17] Application at 6. See Ohio Adm. Code 4901:1-5-08(D)(1).

[18] Ohio Adm. Code 4901:1-5-08(D)(2).

Application, this limitation should be part of that guidance.[19] Staff included the limitation in its evaluation of the Application.[20]

In addition, as the Staff Report pointed out, Ohio Adm. Code 4901:1-5-08(D)(3) requires a local exchange provider to file "[s]upplemental documentation sufficient to justify the request…."[21] A similar requirement, concerning the "Act of God" waivers that were replaced by the grace period in the new rules, was found in the MTSS that were in effect at the time the Application was filed. Ohio Adm. Code 4901:1-5-16(C) required that "Act of God" waiver requests "shall state the specific nature of the act of God, the extent and location of damaged facilities, and the number of customers affected." The rule also required a local service provider to "justify and document in its records each instance where it has applied an act of God exception."

A review of the Application shows that Verizon failed to make the showing that Verizon itself suggested. Rather than providing a three-year average, Exhibit 1 to the Application showed the *two-year* average for both total trouble reports and out-of-service trouble reports for each exchange for each day of the exemption request.[22] Although all of the exchanges purportedly were above the 300% threshold for the two-year average,

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[19] Ohio Adm. Code 4901:1-5-08(D)(4) states that "[i]f the commission or an attorney examiner appointed by 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." This provision would not apply for two reasons. First and foremost, it was not in effect at the time the Application was filed, and thus is unenforceable. Second, Verizon pointed to rule 8(D) for purpose of providing guidance on how to determine the merits of the Application. Rule 8(D)(4) is a procedural rule only, and thus would have no bearing on the merits of the Application.

[20] See Staff Report at 3-4.

[21] Id. at 3.

[22] See also Application at 6-7.

many exchanges had borderline increases.[23] Use of a three-year average might eliminate some of these exchanges.

Any exchanges falling below 300% using a three-year average would have to be located in a county that was under a state of emergency. As the Staff Report stated, the governor declared a state of emergency in nine counties – Allen, Crawford, Hancock, Hardin, Putnam, Richland, Seneca, Van Wert, and Wyandot – during the time period in question.[24] A review of the Verizon service territory map shows that only eleven of the exchanges listed in Exhibit 1 to the Application (Attica, Bettsville, Bloomville, Carey, Clyde, Crestline, Galion, McComb, North Baltimore, Republic and Scott) are at least partly located in those counties.[25] Thus, the other 21 exchanges listed in Exhibit 1 do not meet the Verizon-suggested standard in Ohio Adm. Code 4901:1-5-08(D)(1)(b).

The Staff Report states that only two exchanges – Crestline and Galion – were both in a county that was under a disaster declaration and had more than ten out-of-service trouble reports on a given day during the period in question.[26] In addition, Exhibit 1 shows that Bryan, Hicksville, Montpelier and Ney had more than ten out-of-service trouble reports on a given day during the period and at least a 300% increase in out-of-service trouble reports (assuming that use of a three-year period would not disqualify them). Thus, a total of six exchanges might qualify under the Ohio Adm. Code 4901:1-5-08(D) standard.

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[23] For example, Attica, Bettsville, Bloomville, Carey, Curtice-Oregon, Edgerton, Edon, Elmore, Fayette, Haskins-Tontogany, Helena, Loudonville, Port Clinton, Put In Bay, Republic, Wayne-Bradner and Weston.

[24] Staff Report at 3.

[25] The Staff Report found only eight exchanges in counties that were declared to be disaster areas. Id.

[26] Id.

The lack of documentation, however, would eliminate all six of these exchanges. Although Exhibit 3 to the Application describes in great detail the affect of the weather incident on various governmental agencies, and how those agencies responded to the incident, neither the Application nor the docket in which it was filed (00-1265) contains any information regarding the effect of the incident on Verizon's *facilities*, equipment and personnel – even though the PUCO Staff had made "repeated requests" for the information.[27] As noted above, the need for documentation is not a new requirement; the "Act of God" exception in the former MTSS also required documentation of the effect of a weather-related incident on the company's repair efforts.

Thus, Verizon has failed to meet the very standard that it suggested be used for "precedential guidance." The Commission should deny the Application. If the Application is denied, Verizon failed to meet the requirements of the 07-511 Stipulation.

III. VERIZON FAILED TO MEET THE OUT-OF-SERVICE BENCHMARK TWICE IN 2007; THUS, VERIZON SHOULD BE ASSESSED A $250,000 FORFEITURE PER THE STIPULATION.

In April 2007, Verizon and the PUCO Staff negotiated the Stipulation in order "to resolve Staff's concerns relating to Verizon's past and future compliance with the MTSS."[28] Verizon agreed to "make an incremental $1,000,000 capital investment in its facilities in Ohio" over the term of the Stipulation and to pay $250,000 in forfeitures to the state's General Revenue Fund for Verizon's "past non-compliance with the MTSS rule" relating to clearing out-of-service trouble reports.[29]

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[27] Id.

[28] Stipulation at 1. OCC filed an opposition to the Stipulation in Case No. 07-511 on May 1, 2007.

[29] Id. at 3.

The Stipulation also contained specific benchmarks for Verizon to meet in clearing out-of-service and service-affecting trouble reports and in installing service. The out-of-service ("OOS") benchmark is as follows:

> An additional forfeiture of $250,000 will be held in abeyance pending Verizon's performance of the requirements under this Stipulation relating to out-of-service conditions. Beginning May 1, 2007, Verizon will maintain an average 12-month statewide performance level of 90% of the MTSS requirement for restoring OOS conditions within 24 hours. In addition, *performance in any Verizon individual district* will not fall below 85% of this MTSS requirement in any given month within the 12-month Stipulation period. Unless the Commission finds that the level of Verizon's OOS performance under this Stipulation was not maintained, this additional forfeiture will be waived and no payment thereof will be required.[30]

In approving the Stipulation, the Commission noted that the forfeitures are "automatic...."[31] After OCC applied for rehearing to express concern that the forfeitures would not be automatic (but should be automatic to protect customers), the Commission determined that "in practice, these forfeitures are automatic as these forfeitures are payable upon the existence of two objective preconditions. These preconditions include (a) Verizon's failure to meet the identified MTSS commitment and (b) a Commission finding of such failure."[32]

The Commission should make such a finding. The Staff Report stated that in order for Verizon's performance to meet the Stipulation's benchmark for the Norwalk district for August 2007, the Commission would have to approve 85 of the 153 out-of-service "misses" included in the Application.[33] As discussed in Section II above and in

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[30] Id. (emphasis added).

[31] 07-511 Order at 5.

[32] 07-511, Entry on Rehearing (June 27, 2007) at 3.

[33] Staff Report at 2.

the Staff Report, Verizon failed to meet the criteria in Ohio Adm. Code 4901:1-5-08(D) for all exchanges included in the Application. Even if the Commission were to approve the six exchanges that had met requirements under 8(D)(1) and (2), Exhibit 1 to the Application shows that those six exchanges combined had only 58 misses – 27 short of the number needed for Verizon to meet the benchmark. Thus, Verizon missed the out-of-service benchmark for the Norwalk District during August 2007.

Further, even if the Commission were to approve at least 85 of the 153 out-of-service misses in the Norwalk District, the Staff Report noted that Verizon admitted its failure to meet the out-of-service benchmark for the Portsmouth District in December 2007.[34] Thus, regardless of whether the Commission grants Verizon's Application, the Commission should assess the additional $250,000 forfeiture that has been held in abeyance. Denying the Application would only give the Commission an additional reason to assess the forfeiture.

IV. CONCLUSION

The Staff Report is correct in its analysis of the Application. In the interests of the Ohio customers that the 05-711 Stipulation claimed to protect and that the PUCO approved, the Commission should deny Verizon's request for exemption from the requirement to clear out-of-service trouble reports within 24 hours. Regardless of how the Commission rules on the Application, Verizon should be assessed the additional $250,000 forfeiture for its failure, during December 2007, to meet the Stipulation's out-of-service benchmark to protect customers in the Portsmouth District.

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[34] Id.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons on the attached list, on this 29th day of January 2008.

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