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Ms. Reneé 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 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 Supplemental 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

Thomas E. Lodge

cc: 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

Enclosures

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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**
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.	)))))	**Case No. 07-0511-TP-UNC**

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

On January 29, 2008, the Commission issued an Entry admitting as evidence the January 24, 2008 Staff Report ("Report"), which evaluated the Application of Verizon North Inc. for Limited Exemption (the "Exemption Application"). The Entry further found that interested parties should have an opportunity to comment on the Report by February 1, 2008, while noting that Verizon North Inc. ("Verizon") and the Office of the Ohio consumers' Counsel ("OCC") had already made filings commenting on the Report.[1] Finally, it found that interested parties should have an opportunity to comment on the Report by February 1, 2008.

Because Verizon has already commented on the Report, Verizon is uncertain whether the January 28 Comments must be refiled to comply with the Entry. To ensure they are properly before the Commission, Verizon incorporates by reference its January 28 Comments into this Supplemental Response, and provides these supplemental comments.

[1] *See* Response of Verizon North Inc. to January 24, 2008 Staff Report filed January 28, 2008 (the "January 28 Comments"). *See* Comments of the Office of the Ohio Consumers'' Counsel filed January 29, 2008 (the "OCC Comments").

1. **The OCC also applies the wrong MTSS rule to Verizon's Exemption Application.**

The OCC concurs in the Report's analysis that applied the standards in new Ohio Adm. Code 4901:1-5-08 (D) ("48-Hour Grace Period Rule")[2] to Verizon's exemption request under Ohio Adm. Code 4901:1-5-02(D) ("Hardship Exemption Rule"). OCC Comments at 7. OCC also agrees with the Report's recommendation that Verizon's Exemption Application be denied, and that Verizon should be fined the total amount held in abeyance under the Stipulation.[3] OCC Comments at 7-9. However, as Verizon stated in its January 28 Comments, the Report applied the wrong MTSS rule to Verizon's request and then failed to follow that wrong rule. OCC's similar analysis is equally flawed and also should be rejected.

OCC faults Verizon for not complying with each of the 48-Hour Grace Period Rule requirements for a waiver under that rule. However, like the Report, the OCC ignores one additional critical provision of the rule – subpart 4 – which provides for automatic approval of a 48-Hour Grace Period Rule request. Thus, the OCC also fails to acknowledge the automatic approval of a 48-Hour Grace Period Rule request when, as here, neither the Commission nor an attorney examiner suspended or rejected the application within 45 days of filing the request. If that provision is applied here, Verizon's Exemption Application is already approved.

Again, however, Verizon did not file a waiver under the new 48-Hour Grace Period Rule. That rule did not even exist during the time period for which Verizon seeks relief. Even if it had

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[2] The new 48 Hour Grace Period Rule became effective January, 2008. *See* Case No. 05-1102-TP-ORD, Entry Nunc Pro Tunc (October 10, 2007). The 48 Hour Grace Period Rule was not in effect in August, 2007 (the time period considered by Verizon's Exemption Application), or in October, 2007 (when that Application was filed). For that reason alone, application of the new rule is inappropriate. Nonetheless, the Rule is instructive because it does identify a magnitude of increased repair orders or a governmental disaster declaration due to a weather-related event that the Commission believes should relieve a provider from meeting normal performance measures.

[3] 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").

existed, Verizon did not seek a waiver of the OOS credits under it. Rather, Verizon demonstrated entitlement to relief under the Hardship Exemption Rule by showing that strict compliance with the effected service performance standards during a period of unusually severe storms, which generated increased repair orders in the magnitude of 300% to 1233% greater than normal, is an unreasonable hardship.

2. A Finding and Order to pay a forfeiture now would violate the Stipulation approved by the Commission.

The OCC Comments agree with the Report that if the Exemption Application is not granted, the Commission should make a finding under the Stipulation now and immediately require Verizon to pay a forfeiture. OCC Comments at 8. Moreover, OCC argues that the amount of such forfeiture should be all of the $250,000 held in abeyance under the Stipulation. *Id.* As Verizon stated in its January 28 Comments, however, the Stipulation provides that such an evaluation must be conducted <u>following</u> performance of the agreement. *See* January 28 Comments at 5-6. If the Commission were to make any finding about Verizon's performance under the Stipulation now, it would only be an evaluation of Verizon's partial performance. Yet, Verizon's performance under the Stipulation – as the words of the Stipulation require[4] – can only be assessed after it has been performed, which is at the end of the stipulation period. Thus, for the Commission to do that now would violate the Stipulation.

Moreover, to direct immediate payment of the total $250,000 held in abeyance, as the OCC Comments recommend, would also violate the Stipulation. Although payment of a forfeiture under III (C) of the Stipulation is automatic upon satisfaction of the two preconditions

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

specified in the Commission's June Entry on Rehearing,[5] both preconditions must still be met. The second precondition – a Commission finding of a failure to perform – must be based on Verizon's performance under the Stipulation. As explained above, that evaluation and finding can only be made after Verizon's performance is evaluated at the end of the term.

Furthermore, when and if the second precondition is implemented, the Stipulation includes no requirement that all of the abated funds be paid. In fact, the Stipulation does not require <u>any</u> portion of the abated funds be paid. The Stipulation only provides that if the Commission finds that the level of Verizon's performance is maintained, the abated forfeiture will be waived and no payment required.[6] The Stipulation does not address what, if any, portion of the total abated amount would be due if Verizon's performance under the Stipulation is not maintained. Whatever percentage it might be, the Stipulation does not require a Commission finding that 100 % of the abated funds are payable now.

Section IV of the Stipulation, its final section, provides for an evaluation of Verizon's performance.[7] Section IV likewise imposes no mandate of payment. Thus, Section IV and Section III (c) only: (1) contemplate that the Commission will conduct an evaluation, and (2) identify a maximum available amount of forfeiture from which the Commission may tailor a penalty if it so finds and directs. Depending on Verizon's performance, the amount of forfeiture might be significantly less than the total amount held in abeyance. Ultimately, the Stipulation leaves the amount up to the sound discretion of the Commission, based on its evaluation of Verizon's performance under the Stipulation.

[5] Case No. 07-511-TP-UNC, Entry on Rehearing (June 27, 2007) at 3. These preconditions are (1) Verizon's failure to meet the identified MTSS requirement, and (2) a Commission finding of such failure.

[6] See Stipulation, Section III(C).

[7] As noted, this evaluation provision is at the end of the agreement because such evaluation will be conducted after Verizon's performance is completed under the Agreement.

Such is only logical. A forfeiture, if any, for missing a metric by fractions of a percent should not equal the maximum amount. Here, with its Exemption Application, Verizon has demonstrated that the Commission should grant an exemption for 153 missed service orders under historically-trying conditions. If that Application is denied, and if the Commission conducts its evaluation of Verizon's performance under the Stipulation, the Commission may find that completing 82.5% of all service orders in the district during the unusually severe weather of August, 2007 – only 2.5 % less than required by the Stipulation – does not require any forfeiture. Indeed, the Commission may heavily weight the fact that on a state-wide basis, Verizon is completing over 90 per cent of its out-of-service repair orders in 24 hours as required by the Stipulation.

In short, the Report and the OCC Comments would deprive the Commission of its discretion to balance the level of forfeiture with the level of performance under the Stipulation. Doing so would violate the Commission-approved Stipulation. Clearly, the Stipulation was intended to give Verizon an incentive to maintain good performance during the term of the Stipulation, and to give the Commission discretion to determine what, if any, forfeiture should be made after Verizon's performance under the agreement is evaluated.

3. The recommendations of the OCC's Comments exceed the scope of this proceeding.

The Entry ordered "that interested persons be afforded an opportunity to comment on the staff report of investigation. . .." The Report is limited to an evaluation of Verizon's Exemption Application, and whether the Commission should grant or deny Verizon's request. Nonetheless, the OCC Comments argue that any forfeiture "should not hinge on the Commission's action on the Application." OCC Comments at 3. In other words, the OCC proposes that the Commission fine Verizon the total $250,000, even if Verizon's Exemption Application is granted and the

Commission rejects the Report. This goes beyond the scope of the Entry, is beyond the scope of the Report and should be rejected.

Verizon's Exemption Application was directed exclusively to performance during the August storms. It did not address any performance later in the year. OCC's claim that Verizon's completion in December of 84.6% of its out-of-service repair orders in the Portsmouth District should be considered now has no merit. Not only is it beyond the scope of this proceeding, it is premature. Verizon's performance in December should not be considered until after Verizon's performance under the Stipulation has been evaluated, not now. Further, Verizon is preparing an additional application that will be directed to at least 12 of the effected reports for the December metric, but it has not filed that application yet. Verizon expects that the Commission will approve the additional application after it is filed. In any event, this is not the time to review the December performance. When it is considered, the Commission should issue a finding that the level of Verizon's performance under the Stipulation was maintained.

Conclusion

The OCC's Comments suffer from the same fatal flaws as the Report. They apply the wrong rule to Verizon's Exemption Application and fail to even follow the wrong rule. Conducting the evaluation of Verizon's performance under part of the Stipulation is premature and would violate the Stipulation. Reviewing matters beyond Verizon's Exemption Application exceed the scope of this proceeding and the Commission's Entry calling for comments on the Report.

WHEREFORE, Verizon requests that the Commission approve Verizon's Exemption Application.

Respectfully submitted,

Verizon North Inc.

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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 1st day of February, 2008.

Thomas E. Lodge

Thomas E. Lodge (0015741)

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