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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review 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. 07-511-TP-UNC

COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in Case 07-511 on behalf of residential consumers,[1] files comments in response to the Entry in these proceedings dated January 29, 2008.[2] The reason for the current pleading cycle is a review of the quality of service that Verizon North Inc. ("Verizon") provides to its Ohio customers.

OCC's initial comments, filed on January 29, 2008, agreed with the conclusions found in the report of the Staff of the Public Utilities Commission of Ohio ("Commission" or "PUCO") docketed on January 24, 2008 ("Staff Report"), in which the

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[1] OCC's intervention in 07-511 was granted in the Finding and Order issued in this proceeding on May 2, 2007 (at 5). OCC has statutory authority to represent residential utility customers pursuant to R.C. Chapter 4911.

[2] The Entry, at 2, set a deadline of February 1, 2008 for filing comments on the Staff Report. As discussed in the accompanying motion for leave to file comments out of time ("Motion"), OCC was not aware of the Entry until late in the afternoon of February 1. OCC submits these comments on the next business day after the deadline.

PUCO Staff recommended that the Commission deny Verizon's October 23, 2007 request for limited exemption from Ohio Adm. Code 4901:1-5-20(B)(4). OCC's initial comments also provided additional support for the PUCO Staff recommendation that the Commission should assess an additional forfeiture of $250,000 against Verizon for failing to repair customers' out-of-service ("OOS") conditions as prescribed by the Stipulation between Verizon and the PUCO Staff docketed in 07-511 on April 30, 2007.

In these comments, OCC discusses just one point regarding the Commission's enforcement of the Stipulation.[3] Verizon, in its January 28, 2008 response to the Staff Report, asserts that the Commission cannot assess a forfeiture against the company until after the one-year term of the Stipulation, which would be May 2008.[4] Verizon points to the evaluation section of the Stipulation, which states in relevant part "[i]f 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."[5] Verizon then quotes Section III(b) of the Stipulation, which provides 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."[6] These provisions, Verizon asserts, lead to the conclusion that an evaluation of Verizon's performance under the Stipulation must "be conducted after the end of the

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[3] As stated in the accompanying Motion, these comments do not reply in detail to Verizon's supplemental comments filed on February 1, 2008, out of fairness to Verizon. OCC does point out, however, that Verizon's supplemental comments reply to OCC's initial comments rather than to the Staff Report. Further, OCC disagrees with Verizon's analysis.

[4] Verizon Response at 5-6.

[5] Id. at 5, quoting Stipulation, Section IV.

[6] Id., quoting Stipulation, Section III(b) (emphasis added by Verizon).

Stipulation period. Otherwise, the evaluation would only be under part of the Stipulation, and would be considering only partial performance."[7]

A review of the Stipulation, however, shows that the Staff's interpretation of the Stipulation is correct, and Verizon's is wrong. First, nothing in the Stipulation specifies when evaluation of Verizon's performance should take place. If Verizon and the PUCO Staff had intended for a performance evaluation for the purpose of assessing forfeitures to have taken place after the Stipulation's term, they would have put specific language in the Stipulation. Indeed, Section I.d. of the Stipulation declares that it was "a product of serious bargaining among capable, knowledgeable parties…." The Commission should therefore follow the Stipulation's plain language rather than Verizon's strained interpretation of the Stipulation.

Second, Section III.b. of the Stipulation has two distinct benchmarks. One benchmark is that Verizon must "maintain an average 12-month statewide performance level of 90% of the MTSS requirement for restoring OOS conditions within 24 hours." Whether Verizon meets this benchmark, obviously, cannot be determined until after the term of the Stipulation. The other benchmark, however, requires that "performance in any Verizon individual district will not fall below 85% of the MTSS requirement **in any given month** within the 12-month Stipulation period" (emphasis added). Just as obviously, this benchmark can, and in fact should, be evaluated at any time during the term of the Stipulation, so that customers are afforded the protection intended by the

[7] Id. at 6.

Stipulation.[8] Verizon's performance on the district level, in the Norwalk and Portsmouth districts, is at issue in the Staff Report. Verizon's statewide performance is not examined.

The Commission need not wait until after the term of the Stipulation to assess a forfeiture for Verizon's failure to meet the district-level benchmark in any given month. Indeed, Commission inaction to enforce the district-level benchmark during the term of the Stipulation might next become the subject of a Verizon argument that the PUCO somehow waived the additional forfeiture under the last sentence of Section III.b.

Third, the Commission has noted the importance – for the customers that are supposed to be protected by the Stipulation – of both the performance benchmarks and the automatic nature of the forfeitures under the Stipulation. In the May 2, 2007 Finding and Order approving the Stipulation, the Commission stated that "the provisions of the Stipulation ensuring future compliance with the MTSS and providing for automatic forfeitures and customer credits for performance failures involving service affecting conditions are a benefit to Verizon ratepayers and enhance the public interest."[9] The Commission's ability to assess an automatic forfeiture against Verizon during the term of the Stipulation benefits Verizon's customers and the public interest.

Based on the above discussion and OCC's initial comments, the PUCO Staff correctly recommended in its Report that the Commission should find Verizon failed to meet the Stipulation's standards for customer service and that an additional $250,000

[8] It is noteworthy that Section III.d. of the Stipulation requires that for any individual month where Verizon's statewide average in clearing service affecting conditions falls below 85%, "in the month following the performance failure, Verizon shall pay a $15 credit to each customer" experiencing a service affecting condition lasting longer than 48 hours (emphasis added). This is another provision that requires an evaluation of Verizon's performance during the Stipulation period, for the protection of Verizon's customers.

[9] Finding and Order at 5.

forfeiture should be assessed against Verizon. The Commission should now find that Verizon failed to meet the benchmarks for service to customers in the Norwalk and Portsmouth districts and should assess the additional forfeiture against Verizon.

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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 4th day of February 2008.

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