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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Commission's Review)
of the Minimum Telephone Service) Case No. 00-1265-TP-ORD
Standards as Set Forth in Chapter 4901:1-5)
of the Ohio Administrative Code.)

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

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in Case 07-511-TP-UNC ("07-511") on behalf of residential consumers,¹ submits comments in response to the Entry in these proceedings dated February 6, 2008. The Entry allows interested persons to comment on the report by the Staff of the Public Utilities Commission of Ohio ("Commission" or "PUCO"), docketed January 24, 2008 ("Staff Report"), reviewing the quality of service that Verizon North Inc. ("Verizon") provides to its Ohio customers.

The review was prompted by Verizon's application to the PUCO for a limited exemption from the Minimum Telephone Service Standards ("MTSS") requirement that telephone companies must repair all out-of-service conditions within 24 hours after

¹ OCC's intervention in 05-711 was granted in the Finding and Order issued on May 2, 2007 (at 5).

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customers notify the company about the outage.² Verizon cited severe weather in northern Ohio as the basis for the request.³ The effect of the exemption that Verizon seeks would be to excuse Verizon for failing to meet a commitment for service to customers contained in the Stipulation between Verizon and PUCO Staff in 07-511.⁴

In its report, the PUCO Staff recommended that the Commission deny Verizon's Application.⁵ The PUCO Staff concluded that Verizon did not meet the new "grace period" standard for weather-related exceptions to the MTSS,⁶ which Verizon asserted as "precedential guidance" for considering its Application.⁷ In addition, if the PUCO's decision results in Verizon failing to meet the out-of-service performance benchmarks of the Stipulation, the PUCO Staff recommended that the Commission find that Verizon failed to meet its performance commitment for service to customers under the Stipulation and order Verizon to pay a \$250,000 forfeiture under the Stipulation.⁸

Both Verizon and OCC previously filed comments regarding the Staff Report. OCC agreed with the Staff Report's conclusions and provided additional support for the PUCO Staff recommendation that the Commission should immediately assess a forfeiture of \$250,000 against Verizon for failing to repair customers' out-of-service conditions as

² 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"). At the time Verizon filed its Application, the requirement was contained in Ohio Adm. Code 4901:1-5-20(B)(4). Effective January 1, 2008, the requirement is in Ohio Adm. Code 4901:1-5-08(B)(5).

³ Id. at 3.

⁴ 07-511, Stipulation (April 30, 2007). The Commission approved the Stipulation in a Finding and Order adopted on May 2, 2007.

⁵ Staff Report at 4.

⁶ Id. at 2-4. The "grace period" rule is in Ohio Adm. Code 4901:1-5-08(D).

⁷ Application at 6.

⁸ Staff Report at 4.

prescribed by the Stipulation.⁹ OCC noted that even if the Application is granted, the Commission should assess a \$250,000 forfeiture against Verizon for its admitted failure to meet the out-of-service benchmark for service to customers in the Portsmouth District for December 2007.¹⁰

Verizon, on the other hand, alleged that a forfeiture against Verizon based on the Stipulation cannot be assessed until after the term of the Stipulation has expired in May 2008, if at all.¹¹ Verizon also asserted that if the Commission chooses to apply the entire “grace period” rule, then the Application should have been automatically approved under Ohio Adm. Code 4901:1-5-08(D)(4) because the Commission did not act on the Application within 45 days.¹² As OCC noted, however, the rule (1) was not effective when the Application was filed, and thus the Commission is not bound by the rule in reviewing the Application, and (2) is procedural in nature and thus is inapplicable to the Application’s merits.¹³

The Staff Report and OCC’s previous comments have addressed all the issues Verizon raised in its comments, and have provided a sound, reasoned basis for the Commission to reject Verizon’s arguments, in favor of affording customers the protection that was the stated result of the Stipulation. The record is adequate for the Commission to make the findings recommended by the PUCO Staff and to assess the additional forfeiture against Verizon.

⁹ See generally OCC’s comments filed January 29 and February 4, 2008.

¹⁰ OCC January 29 Comments at 9.

¹¹ See generally Verizon’s comments filed January 28 and February 1, 2008.

¹² See Verizon’s February 1 Comments at 2.

¹³ OCC’s January 29 Comments at 5, n. 19.

The Commission should assess the additional \$250,000 forfeiture against Verizon as prescribed in the Stipulation. As OCC has noted, the Commission may assess the forfeiture based solely on Verizon's failure to meet the out-of-service performance benchmark for providing service to customers in the Portsmouth District in December 2007,¹⁴ or in combination with Verizon's failure to meet the same benchmark for providing service to customers in the Norwalk District in August 2007, should the Commission deny the Application.¹⁵

Although Verizon argues that either failure should result in a lower, or no, forfeiture,¹⁶ the Stipulation's plain language contradicts Verizon's assertion. The out-of-service ("OOS") benchmark for protecting customers 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.*¹⁷

The Stipulation thus states that Verizon's failure to meet either the statewide or the individual district performance benchmark during the Stipulation's term would subject Verizon to a forfeiture of \$250,000.

¹⁴ Verizon has not sought a waiver regarding the miss of the out-of-service benchmark in the Portsmouth District for December 2007, and has not docketed any information (e.g., how the weather affected Verizon's facilities) that might serve to excuse Verizon from missing the out-of-service benchmark in either the Portsmouth or the Norwalk district.

¹⁵ OCC's January 29 Comments at 9.

¹⁶ Verizon's February 1 Comments at 4-5.

¹⁷ Stipulation at 3 (emphasis added).

The Stipulation does not require the Commission to make a subjective determination regarding the amount that Verizon should pay for not meeting a benchmark. In defending the Stipulation against OCC's skepticism concerning the Stipulation's forfeiture provisions (a skepticism founded in reasons that are all too obvious now), Verizon itself characterized the Stipulation's forfeitures thusly:

Those forfeitures are payable upon the existence of two objective preconditions: (a) Verizon's failure to meet the identified MTSS commitment, and (b) the Commission's finding of such failure. Both of those events are empirically demonstrable, and on their coincidence, **the identified forfeiture is mandatory and is "automatic."**¹⁸

Verizon also stated that the forfeitures were "heavily negotiated...."¹⁹ Thus, if the PUCO Staff and Verizon had envisioned differing forfeitures based on varying levels of Verizon's noncompliance with the performance benchmarks, the Stipulation would have included a tiered forfeiture structure. The Stipulation has no such structure. Any miss of a performance benchmark in the Stipulation is as good as a mile; the **full** forfeiture should be assessed for **any** failure by Verizon to meet a performance benchmark.

In eliminating the tiered structure for customer credits regarding repair of service outages in the MTSS, the Commission stated that it intended "to simplify and streamline the complicated tiered system of credits now in place, making them easier for the companies to administer and easier for customers to understand."²⁰ The same simplicity should apply to the assessment of forfeitures for Verizon's failure to meet any Stipulation

¹⁸ 07-511, Memorandum of Verizon North, Inc. in Opposition to Application for Rehearing of the Office of the Ohio Consumers' Counsel (June 11, 2007) at 3 (emphasis added).

¹⁹ *Id.* at 5.

²⁰ *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. 05-1102-TP-ORD, Entry on Rehearing (July 11, 2007) at 33.

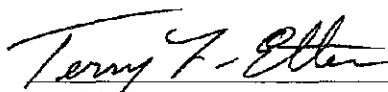
benchmark, thus making the forfeitures easier for the Commission to administer and for Verizon and its customers to understand.

The Commission's ability to assess an automatic forfeiture against Verizon during the term of the Stipulation protects and benefits Verizon's customers and the public interest.²¹ There is no reason for the Commission to complicate the process as Verizon suggests. The PUCO Staff correctly analyzed the Application's merits under the entire "grace period" rule, instead of part of the rule as Verizon suggested, and correctly found that the Application should be denied.

The Commission should now find that Verizon failed to meet the Stipulation's out-of-service benchmark for service to customers in the Norwalk and Portsmouth districts and should assess a \$250,000 forfeiture against Verizon as required by the Stipulation. Even if the Commission grants the Application, the Commission should assess the \$250,000 forfeiture against Verizon for its failure to meet the out-of-service benchmark for service to customers in the Portsmouth District for December 2007.

Respectfully submitted,

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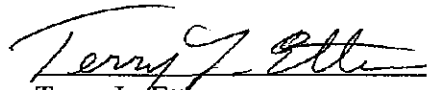
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²¹ See Finding and Order at 5.

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 15th day of February 2008.


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