

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) On October 23, 2007, as amended on October 24, 2007, Verizon North Inc. (Verizon) filed an application seeking a limited exemption (exemption application), pursuant to Rule 4901:1-5-02, Ohio Administrative Code (O.A.C.), of the obligation to clear out-of-service (OOS) trouble reports within 24 hours as set forth in Rule 4901:1-5-20(B)(4), O.A.C.<sup>1</sup> According to the exemption application, Verizon seeks this exemption due to the unusually severe weather conditions occurring across Northern Ohio between August 20 and August 29, 2007, which resulted in excessively high numbers of trouble reports. Specifically, Verizon is seeking a limited exemption for 153 OOS trouble reports that could not be completed within 24 hours due to the severe weather conditions.
- (2) In support of its request for exemption, Verizon notes that unusually severe weather and excessive flooding conditions resulted in a huge spike in the number of OOS trouble reports the company received between August 20 and August 29, 2007. Despite increasing the number of technicians in the affected area, cancelling time off, using volunteers, increasing overtime,

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<sup>1</sup> The Commission notes that, at the time this exemption application was filed, the Commission had adopted new minimum telephone service standards (MTSS) as Chapter 4901:1-5, O.A.C., but that those new rules had not yet become effective and were still subject to legislative review before the Joint Committee on Agency Rule Review. The new MTSS standards became effective on January 1, 2008.

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and working 12-hour shifts, Verizon was still unable to clear 153 trouble reports within the 24-hour time frame set forth in Rule 4901:1-5-20(B)(4), O.A.C. Verizon notes that this severe weather affected 28 of the company's exchanges including: Loudonville, Galion, Evansport, Hicksville, Ney, Fayette, McComb, Curtice-Oregon, Elmore, Port Clinton, Put-in-Bay, Antwerp, Scott, Crestline, Clyde, Gibsonburg, Helena, Attica, Edgerton, Edon, Montpelier, Pioneer, West Unity, Haskins-Tontogany, North Baltimore, Wayne-Bradner, Weston, and Carey.<sup>2</sup>

- (3) As a testament to the severity of the weather during August 2007 in the affected exchanges, Verizon submits that the number of trouble reports received from the impacted exchanges increased in a range from 300 percent in some exchanges to 1,233 percent in other exchanges over the two-year average. In addition, Verizon notes that, on August 22, 2007, Governor Strickland declared a state of emergency in nine counties (i.e., Allen, Crawford, Hancock, Hardin, Putnam, Richland, Seneca, Van Wert, and Wyandot) and that on August 27, 2007, President Bush declared a major disaster for seven Ohio counties (i.e., Allen, Crawford, Hancock, Putnam, Richland, Seneca, and Wyandot).
- (4) Verizon submits that Rule 4901:1-5-02(D), O.A.C., permits a telephone company to seek an exemption in the case of an unreasonable hardship. Acknowledging, however, that this rule does not specifically define the showing for such an exemption, Verizon nevertheless claims that it is instructive to look at the recently enacted new MTSS for an objective standard to use as a guide in evaluating Verizon's pending exemption application. Specifically, Verizon recommends applying the criteria outlined in new Rule 4901:1-5-08(D), O.A.C. According to Verizon, Rule 4901:1-5-08(D), O.A.C., permits a telephone company to obtain a grace period for paying customer credits in an exchange due to an extreme, unique, or unforeseeable weather-related incident. Continuing, Verizon states that the grace period may be requested due to either: (a) a 300 percent increase in the number of OOS reports compared to the average number of OOS reports for the

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<sup>2</sup> Exhibit 1 to Verizon's application listed four additional exchanges namely, Bettsville, Bloomville, Bryan, and Republic.

affected months of the three previous years, or (b) 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. In light of the above, Verizon submits that it would be unreasonable for the company to be held to the normal OOS metrics between August 20 and August 29, 2007, in the affected exchanges and that the company's request for an exemption involving the 153 OOS trouble reports is reasonable and should be granted.

- (5) On January 24, 2008, Commission Staff docketed a report of investigation concerning the Verizon exemption application. In the report of investigation, Staff notes that the established relief for a local exchange carrier that experienced extreme weather conditions during August 2007 was to file for an act of God waiver pursuant to then effective Rule 4901:1-5-16(C), O.A.C. Staff opines that the reason Verizon is seeking a limited exemption of the OOS rule rather than a traditional act of God waiver<sup>3</sup> is due to a stipulation entered into between the Staff and Verizon in Case No. 07-511-TP-UNC (07-511), *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*, that, among other things, addressed the company's service quality and sought to resolve Verizon's noncompliance with the 24-hour OOS restoration rule. Among other things, the 07-511 stipulation, approved by the Commission on May 2, 2007, requires Verizon to: invest one million dollars to improve service quality in those regions of the state most affected by OOS conditions; immediately pay \$250,000 in civil forfeitures; maintain an average 12-month statewide OOS restoration rate of 90 percent for one-year beginning on May 7, 2007; maintain a monthly 24-hour OOS restoration rate of 85 percent in each district; achieve statewide and district-specific service-affecting clearance rates of 85 percent and 80 percent on a 12-month average basis and a monthly district-specific basis, respectively, for a one-year period commencing on June 1, 2007; and held in abeyance further forfeitures of \$250,000 and \$100,000, respectively, for failing to maintain the OOS restoration and service-affecting clearance targets.

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<sup>3</sup> In fact in discussions with Staff, Verizon indicated that all affected customers who experienced an outage during this time period received the appropriate service credit.

- (6) Staff observes that, based upon the monthly reports required by the 07-511 stipulation, Verizon missed the district-specific 85 percent 24-hour OOS restoration targets in the company's Norwalk district in August 2007 and in the Portsmouth district in December 2007. Staff agrees with Verizon that, in the absence of any other formal criteria, the best criteria to evaluate Verizon's exemption application are the criteria set forth in new Rule 4901:1-5-08(D), O.A.C. However, after evaluating Verizon's exemption application under the criteria set forth in new Rule 4901:1-5-08(D), O.A.C., Staff opines that only two exchanges (i.e., Galion and Crestline) met all of the stated criteria. Staff submits that the two exchanges only represent 12 of the 153 OOS misses for which Verizon is seeking an exemption. The remaining 141 OOS misses do not meet the relevant criteria for various reasons including: the OOS miss was not in a county for which an emergency had been declared, the OOS miss involved fewer than 11 daily OOS trouble reports, or the OOS miss had no exchange level supporting data. Staff further notes that the Commission would have to agree that 85 of the 153 misses qualified for an exemption in order for Verizon to meet the 85 percent district-specific threshold in the Portsmouth district during August 2007.

Based upon this evaluation, Staff recommends that the Commission reject Verizon's exemption application and conclude that the act of God provisions offer the appropriate relief in such situations. As a result of rejecting Verizon's exemption application, Staff further recommends that the Commission determine that Verizon has failed to maintain the monthly district-wide 24-hour OOS performance level outlined in the 07-511 stipulation thereby resulting in the additional forfeiture of \$250,000 now becoming due. As a final matter, Staff proposes to continue monitoring Verizon's OOS performance for the remainder of the 07-511 stipulation period. No later than at the conclusion of the 07-511 stipulation period, Staff will review Verizon's performance throughout the 07-511 stipulation period to determine if it is appropriate to recommend further action beyond the 07-511 stipulation.

- (7) On January 28, 2008, Verizon filed a response to the January 24, 2008, Staff report. In its response, Verizon argues that the Staff report is arbitrary, unreasonable, unlawful, and fundamentally unfair. In support of its claims, Verizon first argues that the

Staff report applies the wrong MTSS rule to Verizon's application for a limited exemption. Instead of evaluating its application for a limited exemption under the unreasonable hardship standard set forth in Rule 4901:1-5-02(D), O.A.C., Verizon claims the Staff used the 48-hour grace period provisions (i.e., 300 percent trouble ticket increase or the governmental disaster declaration) of newly enacted Rule 4901:1-5-8(D), O.A.C. Verizon claims that the appropriate 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 afford Verizon relief from the provisions of former Rule 4901:1-5-20(B)(4), O.A.C. Verizon submits that a 300 to 1,233 percent increase in trouble reports is sufficient to support Verizon's application for a limited exemption for the time frame August 20 through August 29, 2007.

Verizon next claims that the Staff report erred by not considering all of the provisions of newly enacted Rule 4901:1-5-08(D), O.A.C. Verizon submits that the Staff report fails to mention that Rule 4901:1-5-08(D), O.A.C., provides for an automatic waiver if the Commission does not reject the application in 45 days. Based upon its filing of October 23, 2007, Verizon claims that, even if the request for exemption were appropriately considered under Rule 4901:1-5-08(D), O.A.C., the request for a limited exemption has been approved.

Lastly, Verizon avers that the Staff report incorrectly represents the mechanism by which Verizon's OOS performance is to be evaluated under the terms of the 07-511 stipulation. Specifically, Verizon claims that the evaluation period of the company's OOS performance under the 07-511 stipulation is to be done after the stipulation term has ended. Therefore, Verizon posits, it is premature to conduct an evaluation of Verizon's performance and apply a forfeiture at this time when the 07-511 stipulation evaluation period has not concluded.

- (8) On January 29, 2008, the Office of the Ohio Consumers' Counsel (OCC) filed comments concurring with the Staff's recommendation to deny Verizon's application for limited exemption and assessing the additional forfeiture against the company. In support of its position, OCC submits that Verizon does not meet the standard that the company offered as

"precedential guidance" for providing minimum service to Ohio customers. OCC also notes that Verizon failed to meet the OOS benchmark twice in 2007. At best, OCC suggests, a total of six exchanges representing 58 of the 153 OOS misses met the requirements of Rule 4901:1-5-08(D)(1) and (2), O.A.C. That leaves Verizon still 27 OOS misses above the benchmarks in the 07-511 stipulation in the Norwalk district during August 2007 and offers no reasonable explanation for failing to meet the OOS benchmark in the Portsmouth district during December 2007. Thus, Verizon should be assessed the \$250,000 forfeiture pursuant to the 07-511 stipulation.

Further, OCC avers that in offering newly adopted Rule 4901:1-5-08(D), O.A.C., as precedential guidance for consideration of its application for limited exemption, Verizon failed to acknowledge several key limitations to this provision. Citing to Rule 4901:1-5-08(D)(2), O.A.C., one such limitation, according to OCC, is that exchanges with ten or fewer daily OOS reports during the requested grace period are ineligible for this grace period. Another limitation, OCC submits, is in Rule 4901:1-5-08(D)(3), O.A.C., which requires a company to file supplemental documentation sufficient to justify its request.

- (9) By entry issued on January 29, 2008, interested persons were offered an opportunity to comment on the Staff report pursuant to Rule 4901-1-28(E), O.A.C. Such comments were due no later than February 1, 2008.
- (10) By entry issued on February 6, 2008, interested persons were given an additional opportunity to comment on the Staff report of investigation filed in this matter on January 28, 2008. Additional comments were due on February 15, 2008. Additional comments were filed by OCC on February 15, 2008.
- (11) For the reasons discussed below, the Commission determines that Verizon's exemption application should be denied. Verizon's application for a limited exemption and the company's response to the Staff report present the Commission with essentially two issues to address. The first issue involves identifying the appropriate standard by which to evaluate Verizon's application for a hardship exemption under former Rule 4901:1-5-02(D), O.A.C. In light of the fact that former Rule

4901:1-5-02(D), O.A.C., does not specifically define the showing for such an exemption, Verizon proposed that the provisions of newly enacted MTSS Rule 4901:1-5-08(D), O.A.C., could serve as "precedential guidance" when evaluating what increase in trouble tickets would be considered unreasonable for purposes of waiving the normal restoration intervals under the OOS provisions of former Rule 4901:1-5-20(B)(4), O.A.C. Staff agreed with Verizon's proposal to use the requirements under newly enacted Rule 4901:1-5-08(D), O.A.C., as guidance to evaluate the company's exemption application. In light of the fact that there is no identified standard within the rule itself to evaluate a hardship exemption, the Commission determines that it was not unreasonable to apply the agreed upon requirements of Rule 4901:1-5-08(D), O.A.C., to this application. In applying the provisions of Rule 4901:1-5-08(D), O.A.C., however, the Commission determines that all provisions of that rule must be part of the evaluation process.

Rule 4901:1-5-08(D), O.A.C., affords local exchange telephone companies with an additional 48-hour grace period to restore an OOS situation due to an extreme, unique, or unforeseeable weather-related incident. This grace period may be requested within ten business days of the weather-related event due to: (a) a 300 percent or more increase in the number of OOS reports compared to the average number of OOS reports for the affected month(s) of the three previous years or (b) any declaration of a state of emergency by the governor or a duly authorized county official for the county in which the telephone exchange is located. Additionally, the rule provides that exchanges with ten or fewer daily OOS reports during the requested grace period are not eligible for this grace period. Finally, supplemental documentation sufficient to justify the requested grace period must be filed within 30 days of the initial grace period request.

Applying all of the criteria of Rule 4901:1-5-08(D), O.A.C., to Verizon's application for limited exemption results in a conclusion that, at most, only six exchanges met the 300 percent or greater threshold or were in a county under a disaster declaration. Verizon Exhibit 1 attached to its application for limited exemption reveals that only the Crestline and Galion exchanges were both in a county that was under a disaster declaration and had more than ten OOS reports on a given day

during the period in question. Additionally, Verizon Exhibit 1 reveals that the Bryan, Hicksville, Montpelier, and Ney exchanges had at least a 300 percent increase in OOS trouble reports over a two-year period and had more than ten OOS trouble reports on a given day between August 20 and August 29, 2007. The total OOS misses between these six exchanges is 58 misses. Therefore, the most liberal evaluation of Verizon's own data reveals that the company would receive an exemption for 58 of the 153 OOS misses which still leaves Verizon 27 misses short ( $85-53=27$ ) of the total needed to meet the 85 percent OOS restoration target of the 07-511 stipulation in the Norwalk district during August 2007. Moreover, despite repeated requests from Staff, the lack of documentation supporting even these six exchanges could eliminate these exchanges from consideration for an exemption.

In its January 28, 2008 response, Verizon is also critical of the Staff report for failing to consider all of the provisions of Rule 40901:1-5-08(D), O.A.C. Specifically, Verizon avers that the Staff report fails to mention that the rule provides for an automatic waiver if the Commission does not reject the application within 45 days of filing. As outlined in the discussion above, it appears as if Verizon is picking and choosing only the provisions of Rule 4901:1-5-08(D), O.A.C., that support its application. We would again note that applying all of the provisions of Rule 4901:1-5-08(D), O.A.C., would result in denial of Verizon's application because under paragraph (D)(1) of Rule 4901:1-5-08, O.A.C., Verizon should have submitted its request within ten business days of the weather-related incident. Applying all of the provisions of Rule 4901:1-5-08(D), O.A.C., to Verizon's exemption application reveals that the company has failed to justify an unreasonable hardship that would qualify for a limited exemption of the OOS requirements then in effect and set forth in Rule 4901:1-5-20(B)(4), O.A.C. Therefore, Verizon's exemption application is denied.

- (12) The second issue presented for Commission consideration by Verizon in the company's January 28, 2008, response to the Staff report is whether it is appropriate, at this time, to evaluate Verizon's OOS performance under the stipulation adopted in 07-511. Verizon argues that the phrase "under this Stipulation" in Section III(b) of the 07-511 stipulation must mean that the



evaluation of Verizon's performance should 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 Commission notes that the 07-511 stipulation is not clear on when Verizon's performance under the stipulation will be evaluated. For instance, regarding OOS performance, the 07-511 stipulation holds an additional forfeiture in abeyance and commits Verizon to maintaining an average 12-month statewide performance level as well as a monthly individual district performance level. Clearly, the statewide performance level would have to be evaluated at the conclusion of the evaluation time frame. It is less clear, however, whether the evaluation of Verizon's monthly OOS performance must wait until the end of the evaluation period.

Given this ambiguity, the Commission finds that it is not unreasonable to evaluate Verizon's district-specific performance any time during the 12-month reporting period required by the 07-511 stipulation. Thus, we agree with Staff that the denial of Verizon's exemption application results in the company failing to satisfy the 85 percent district-specific performance level in the Norwalk district in August 2007. Further, we note that the Staff report reveals that Verizon's OOS performance level in the Portsmouth district during December 2007 fell below the district-specific, agreed-to performance level outlined in the 07-511 stipulation.

Therefore, the additional \$250,000 forfeiture that was held in abeyance as outlined in the 07-511 stipulation is now due and payable. The 07-511 stipulation does not designate where this additional forfeiture is to be directed. While this additional forfeiture now due could be paid to the state, the Commission believes that a more appropriate action would be for Verizon to use this additional \$250,000 to provide a benefit to the telecommunications customers of Ohio. Accordingly, we direct Verizon to work with Connect Ohio Initiatives, LLC (Connect Ohio), in cooperation with the Ohio Broadband Council, to use the \$250,000 for a broadband project(s) in one or more underserved areas of Ohio. Connect Ohio is a non-profit public-private partnership involving the state and broadband providers to, among other things, fill in gaps in broadband

availability in Ohio and to assist in supplying computers to areas that have broadband service but lack computer access. Verizon shall expend this \$250,000 in cooperation with Connect Ohio, working with the Ohio Broadband Council, within 12 months of this finding and order. The \$250,000 shall be in addition to any monies that Verizon commits to Connect Ohio.

- (13) As a final matter, we direct our Staff to continue to monitor Verizon's OOS performance for the remainder of the 07-511 stipulation period. No later than at the conclusion of the 07-511 stipulation period, Staff is instructed to review Verizon's performance throughout the 07-511 stipulation period and determine if further action beyond the 07-511 stipulation is necessary. Staff should docket its final determination in the 07-511 docket within 60 days of the conclusion of the stipulation period.

It is, therefore,

ORDERED, That Verizon's application for a limited exemption is denied as discussed in finding 11. It is, further,

ORDERED, That, for the reasons discussed above, Verizon has failed to satisfy the conditions of the stipulation entered into in Case No. 07-511-TP-UNC. It is, further,

ORDERED, That Verizon expend the \$250,000 forfeiture as directed in finding 12. It is, further,

ORDERED, That staff continue to monitor Verizon's performance and docket staff's final determination as discussed in finding 13. It is, further,

ORDERED, That a copy of this finding and order be served upon Verizon North Inc., its counsel, and the Office of the Ohio Consumers' Counsel.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Paul A. Centolella

  
Ronda Hartman Fergus

  
Valerie A. Lemmie

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Donald L. Mason

JRJ/vrm

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MAR 5 2008



Renee J. Jenkins  
Secretary