

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Verizon	)	
North Inc. for Approval of an Alternative Form	)	
of Regulation of Basic Local Exchange Service	)	Case No. 08-989-TP-BLS
and Other Tier 1 Services Pursuant to Chapter	)	
4901:1-4, Ohio Administrative Code.	)	
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**VERIZON’S REPLY IN SUPPORT OF ITS ALTERNATIVE MOTION FOR LEAVE TO  
SUPPLEMENT ITS APPLICATION**

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This Reply responds to the “Reply to Verizon’s Memorandum in Response by The Office of the Ohio Consumers’ Counsel,” filed November 7, 2008 (“OCC’s November 7 Reply”). In OCC’s November 7 Reply, OCC opposed and sought to strike supplementary material filed by Verizon North Inc. (“Verizon”) on October 27, 2008.

Background

OCC’s November 7 Reply attempts to make this case more complicated than it is. Verizon’s Application in this case was filed August 29, 2008, though Verizon subsequently requested and was granted an as-filed date of September 2, 2008.<sup>1</sup> On October 17, 2008, OCC filed a timely Opposition to the Application (“OCC’s Opposition”).

On October 27, 2008, Verizon North Inc. (“Verizon”) filed its Supplement To Its Application And, In The Alternative, Motion For Leave To Supplement Its Application (“Verizon’s Supplement”). Verizon’s Supplement was filed concurrently with Verizon’s Memorandum In Response To The Opposition Of The Office Of The Ohio Consumers’ Counsel And In Support Of Its Motion To Supplement Its Application (“Verizon’s Memorandum in

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<sup>1</sup> Entry of October 10, 2008 at 2.

Response”). The combined purpose of Verizon’s Supplement and Verizon’s Memorandum in Response was to respond to OCC’s Opposition with argument and with additional information.

In its November 7 Reply, OCC asserts argument contra the submission of Verizon’s Supplement, stating:

Verizon’s attempt to supplement its Application without a proper motion and as a response to OCC’s Opposition – filed ten days after OCC filed its Opposition – is inappropriate. *The Commission should strike the Supplement.* In addition, the Commission should make clear that in future basic service alt. reg. application proceedings, such efforts to supplement an application will not be allowed.

November 7 Reply at 4 (emphasis added). OCC then goes on to respond not only to the arguments set forth in Verizon’s Memorandum in Response, but also to the factual information set forth in Verizon’s Supplement. Verizon replies in accordance with Ohio Admin. Code §4901-1-12(B)(2).

#### Argument

OCC’s opposition to Verizon’s Supplement is unavailing procedurally, and is factually erroneous. The Supplement is properly before the Commission, and properly demonstrates that Verizon’s Application should be granted.

1. The Commission’s Rules Plainly Contemplate Supplementation of the Application, and Verizon Properly Placed the Supplement Before the Commission.

This case is governed by Ohio Admin. Code §4901:1-4-09, which establishes the contours of an Application, the timing of its consideration, and various other procedural rules. This rule recognizes that an Application might be supplemented, and subsection (J) explicitly directs what can happen in that event:

The commission, legal director, or attorney examiner may modify the time frames stated herein based upon a material modification filed subsequent to the initial application.  
Chapter.

In light of this framework, Verizon properly placed its Supplement in the Record:

- To respond to the legal and factual arguments of OCC's Opposition, Verizon filed Verizon's Memorandum In Response.
- To provide additional information, Verizon filed its Supplement.
- Although Verizon does not believe a motion is required to supplement an Application, Verizon nonetheless included within its Supplement an Alternative Motion For Leave To Supplement Its Application, stating at page 1 (emphasis added):

Verizon North Inc. ("Verizon") hereby supplements its Application herein, with the addition of the information set forth and attached hereto as Supplement 1 to its Application for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services. *In the alternative, and if and to the extent required, Verizon hereby moves the Commission for leave to submit this Supplement.*

- Recognizing the procedural requirements of Ohio Administrative Code §4901:1-1-12, Verizon also stated in its Supplement at page 1 (emphasis added):

Concurrently, Verizon is filing its Memorandum in Response to the Opposition of the Office of the Ohio Consumers' Counsel and In Support Of Its Motion to Supplement Its Application, *which will serve as the Memorandum in Support of Verizon's alternative Motion.*

- Finally, to address the treatment of supplemental material as described in §4901:1-4-09(J), Verizon stated in its Supplement at page 2:

[A]s described in Verizon's Memorandum in Support, this information provides only additional support for the findings requested in Verizon's September 2, 2008 Application, and requests no additional relief. Accordingly, Verizon submits that the information supplied herewith does not constitute a "material modification filed subsequent to the initial application," as contemplated by Ohio Administrative Code §4901:1-4-9. Nonetheless, if the Commission concludes otherwise, Verizon submits that response to this limited Supplement warrants only a brief modification of time as described in that Rule.

In light of the foregoing, Verizon's Supplement is "properly" before the Commission, and OCC's effort to strike Verizon's Supplement as somehow "improper" must be rejected. Equally out of place is OCC's request that the Commission "make clear that in future basic service alt. reg.

application proceedings, such efforts to supplement an application will not be allowed.” To do that, the Commission would have to repeal §4901:1-4-09(J).

Finally, of course, supplementing an Application is nothing new. Although the OCC’s November 7 Reply fails to mention it, such Supplements have been accepted in prior cases filed under the “BLS” case code, and the Commission has correctly and lawfully allowed them. *See, e.g., In the Matter of the Application of AT&T Ohio*, Case No. 06-1013-TP-BLS (Entry), September 21, 2006; *In the Matter of the Application of United Telephone company d/b/a Embarq*, Case No. 07-760-TP-BLS (Entry) September 27, 2007. Indeed, in this very proceeding, the Attorney Examiner acknowledged Verizon’s “motion for leave to supplement its application” in his Entry of November 4, 2008, at paragraphs (4) and (6).

It follows that Verizon’s Supplement is properly and lawfully before the Commission, that by its November 7 Reply OCC has established no reason why it should be “stricken,” and that Verizon’s alternative Motion for Leave to Supplement should be granted.

2. Verizon’s Supplement Provides Relevant Probative Information and OCC’s November 7 Reply, While Responsive, Does Not Establish Otherwise.

The remainder of OCC’s November 7 Reply addresses the merits of Verizon’s Supplement. First, OCC has not been prejudiced by Verizon’s filing: with its November 7 Reply, OCC demonstrates that it was provided both the time and the opportunity to respond effectively. Indeed, OCC sought and was granted additional time to so respond.<sup>2</sup> As a result, the Commission should disregard OCC’s complaints concerning the timing of Verizon’s Supplement. OCC was neither prejudiced nor impeded in its opportunity to respond, and the Commission may thus continue this case on its current timetable.

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<sup>2</sup> Entry of November 4, 2008.

Second, Verizon has met its burden under the Ohio Administrative Code. The Rule under which Verizon has proceeded, Ohio Administrative Code §4901:1-4-10(C)(4), only requires as follows:

An applicant must demonstrate that in each requested telephone exchange area that at least fifteen per cent of total residential access lines have been lost since 2002 as reflected in the applicant's annual report filed with the commission in 2003, reflecting data for 2002; and the presence of at least five unaffiliated facilities-based alternative providers serving the residential market.

As Verizon explained in its Memorandum in Support, OCC has conceded all elements of this test save for the “presence” of alternative providers. Memorandum in Support at 2-3.

With its Application and its Supplement, Verizon demonstrated that “presence.” With its November 7 Reply, however, OCC continues to argue that Verizon’s demonstration is insufficient. *See e.g.* November 7 Reply at 8 (absence of screenshots), at 11 (ZIP code documentation), and at 12 (**specific** Sprint exchanges)(OCC’s emphasis). In other words, OCC is not arguing that Verizon has provided no evidence of “presence” – rather OCC is arguing that Verizon has not provided *enough* evidence.

For example, at page 5 of its November 7 Reply, in commenting on the demonstrated existence of number-block assignments to carriers in the identified Exchanges, OCC asserts that “[s]imply because a carrier has been a number block assigned in an exchange [sic], however, does not show that the carrier is actually providing any local service – or more importantly for the purposes in this case, residential service – in the exchange.” Likewise, at page 7, OCC argues that two affiliated carriers cannot be counted for what they are – two competing carriers – contending out of the clear blue that “[c]ertainly the Commission also intended that the five alternative providers would compete among themselves, which does not occur when the alternatives are

themselves affiliated.”<sup>3</sup> First, not only is the OCC’s statement about affiliates false, but as Verizon stated in its Memorandum in Response, the Commission has recognized in past cases that they do compete by including them in the list of competitors in the market test. *See* Verizon’s Memorandum in Response at 9-10.

Nothing in the Revised Code or the Commission’s rules establishes the burdens proposed by OCC. Plainly, no quantum of proof will be sufficient to satisfy such ever-higher standards. Instead, the Commission should rely on its adopted rules to gauge “presence” – rules that Verizon has satisfied.

Moreover, the OCC ignores or misreads some the information Verizon has provided. For example, OCC takes issue with the web site representations of carriers that state the carriers are present in exchanges. OCC stops short of asserting that web sites are false, but effectively contends that the information they contain is untrue. Verizon cannot be required to assume deceit – Verizon is required only to show a carrier is present in the exchange. Thus, a carrier’s representation to the market that it is present in an exchange establishes that fact. The web pages Verizon has provided with listed exchange zip codes for the areas a carrier operates show that the information was returned by the carrier as “service available” once the exchange zip code was provided. A carrier who is willing to provide service in an area is “present” in the area.

OCC also claims that Cricket and Jump Mobile are not facilities-based carriers. November 7 Reply at 7. OCC ignores the information Verizon has provided to the contrary. For example, in response to the Staff’s Interrogatory #1, Verizon provided proof that both Cricket and

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<sup>3</sup> In this same section of its November 7 Reply, OCC again raises the spectre that Verizon has not effectively established that no “barriers to entry” exist in the Exchanges. Again, however, Verizon notes that the Supreme Court of Ohio has answered that question more than once, and in validating §4901:1-4-10(C)(4), the Court has established the Ohio Administrative Code, not the OCC, as arbiter of that issue. *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301, 2008-Ohio-861; *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 289, 2008-Ohio-860.

Jump Mobile are operating subsidiaries (and not resellers as the OCC contends) of Leap Wireless International via website pages that state such. In addition, Verizon provided a screenshot of a Leap Wireless International, Inc. website that plainly references both Cricket and Jump Mobile as subsidiaries, and also speaks to its networks, auctions, licenses, markets and subscribers reached. Verizon has thus provided proof that both Jump Mobile and Cricket are indeed facilities-based carriers and recognized as separate choices for consumers' telecommunications needs.

Similarly, OCC claims Buckeye Tel does not provide residential service. November 7 Reply at 9-10. Yet, the information Verizon provided shows that the carrier does indeed provide residential service. Buckeye CableSystems utilizes Buckeye Tel (or Buckeye Telesystems) to provision the voice part of its services. The Buckeye CableSystem product information guide (attached to Verizon's response to Staff Interrogatory #7) clearly shows that Buckeye Cable offers Residential Phone Service (as noted on pages 16-18 of the guide) as well as some bundles (referenced on pages 1 and 2). This residential service may be digital in nature and (like most VoIP services) may not be tariffed. Buckeye Communications shows to have ported numbers in the exchanges of Ashland, Bowling Green, Norwalk, Port Clinton and Sylvania. Verizon has verified that the ports in Port Clinton and Sylvania are residential; however, this does not mean that residential service is not offered in the other exchanges. Verizon is entitled to rely on the representations in Buckeye's product guide that it provides residential service and is present in the listed Verizon exchanges.

As respects First Communications, OCC incorrectly claims that First Communications "service is only available for exchanges in the AT&T Ohio service territory." November 7 Reply at 10. In fact, First Communications' Local Exchange Tariff, Section 3, shows that for Residential Towns and Rural Areas Local Calling Plus Package Areas, First Communications mirrors the Verizon Favorite Access Flat Rate Calling Areas. Therefore, the OCC's statement is in error.

Also, contrary to OCC's claim, November 7 Reply at 11, Level 3 meets all of the criteria required to be "present" in a given listed exchange. The Commission has found that proof of residential ported numbers shows Level 3's "presence." *See* Verizon's Memorandum in Response at 7-8. In every exchange that Verizon claimed Level 3 as a facilities-based provider, Verizon has shown that it is porting residential numbers from Verizon in those exchanges. In addition, Level 3 has LERG numbers assigned to it in all of the exchanges. Level 3 has its own network. Level 3 has white page listings. The Commission should not reject Level 3 as a facilities-based provider in the Exchanges where Verizon has provided such proof – which encompasses 23 of the 24 Exchanges at issue.

The OCC's claim that Suddenlink is not present in the Cambridge Exchange, November 7 Reply at 11-12, also ignores the information Verizon provided. With its initial filing (Exhibit 3B), Verizon showed how Suddenlink states at its web site that residential telephone services are available in the Cambridge exchange. In addition, in response to Staff Interrogatory #7, Verizon demonstrated that the Suddenlink website clearly shows Cambridge as an area that it serves. Also in response to Staff Interrogatory #1, Verizon provided support to show that Suddenlink is a facilities-based provider. Just because Suddenlink has no white page listings or ported numbers in the Cambridge exchange does not mean that it is not "present" and offering residential service in the Cambridge exchange.

Finally, as respects Cleveland Unlimited, nTelcos and Revol, November 7 Reply at 13-14, OCC again ignores the facts. In its initial filing Verizon provided support in Exhibit 3B behind each exchange showing the website inputs (by zip code) into the WirelessAdvisor.com website that returned the various wireless providers in the given exchange. This website not only shows the various wireless providers in the given exchange, it also shows the system and technologies used by such carriers. In all exchanges where Verizon claimed Cleveland Unlimited, nTelcos or



Revol as alternate providers, the zip code input into the WirelessAdvisor.com website clearly returned such availability and matched the coverage calling plan area maps provided for Revol and Cleveland Unlimited and the Regional coverage area for nTelcos. In addition, nTelcos has a store locator function that returns Portsmouth-New Boston as a store sales location.

### **Conclusion**

For the foregoing reasons, the Commission should accept Verizon North Inc.'s Supplement, and find that such acceptance warrants no further modification of time in this proceeding. Finally, the Commission should find that Verizon North Inc.'s Application be approved in all respects.

Respectfully submitted,

VERIZON NORTH INC.

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Services Pursuant to Chapter 4901:1-4,	)	
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**CERTIFICATE OF SERVICE**

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The undersigned hereby serves David Bergmann and Terry L. Etter with Verizon's Reply in Support of Its Alternative Motion for Leave to Supplement Its Application, by electronic delivery, November 14, 2008.

/s/ Thomas E. Lodge  
Thomas E. Lodge

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Summary: Reply - Verizon's Reply In Support Of Its Alternative Motion For Leave To Supplement Its Application electronically filed by Mr. Thomas E Lodge on behalf of Verizon North Inc.