

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
New Communications Online and) Case No. 09-455-TP-ACE
Long Distance, Inc. to Provide)
Competitive Telecommunications)
Service in the State of Ohio.)

**MOTION TO INTERVENE; MOTION TO SUSPEND THE APPLICATION; AND
MOTION TO CONSOLIDATE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where New Communications Online and Long Distance, Inc. ("NCOLD") seeks certification as a Competitive Telecommunications Service ("CTS") provider in Ohio.¹ This certification is sought "in conjunction with" the merger of the Ohio operations, including telephone service to residential customers, of Verizon Communications, Inc. ("Verizon") into Frontier Communications Corporation ("Frontier") (collectively, "Companies").² OCC is filing on behalf of the Companies' residential utility consumers in Ohio.

OCC also moves to suspend the Application, pursuant to Ohio Adm. Code 4901:1-6-07 ("Rule 7"), because it does not contain all the exhibits required by the Public Utilities Commission of Ohio ("Commission" or "PUCO"), and because the certification of NCOLD would not be necessary if the PUCO does not approve the Companies'

¹ See R.C. Chapter 4911; R.C. 4903.221; Ohio Adm. Code 4901-1-11; Ohio Adm. Code 4901:1-6-10(H)(1).

² Application, Case No. 09-455-TP-ACE (May 29, 2009) ("Application"), Exhibit C.

merger, which is pending in Case No. 09-454-TP-ACO. OCC also moves to consolidate this case with the merger proceeding.

The reasons the Commission should grant OCC's Motions are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the certification of NCOLD as a CTS provider in Ohio. NCOLD has asked that the certification be effective upon completion of the proposed merger of Verizon's Ohio operations into Frontier.³ At that time, according to the Application, the long distance customers of Verizon Long Distance and Verizon Business Solutions would be transferred to NCOLD, a wholly-owned subsidiary of New Communications Holdings, Inc. ("NCH").⁴ NCH would then be merged into Frontier.⁵

Verizon Long Distance provides service to residential customers in Ohio.⁶ OCC has authority under law to represent the interests of all the Companies' residential utility customers in Ohio, pursuant to R.C. Chapter 4911.

³ Id.

⁴ Id.

⁵ Id.

⁶ See Verizon Long Distance Ohio Price List at Original Page 29 through Original Page 61 (available at http://www.tariffs.net/tariffs/143/OH_VLD_PRICE_LIST_DETARIFFED_SERVICES_021809_Name%20_Change_CUR.pdf).

II. MOTION TO INTERVENE

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of the Companies’ Ohio residential consumers may be “adversely affected” by this case, especially if the consumers were unrepresented in a proceeding involving the certification of a company that would provide their long distance service as a result of the Companies’ merger. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing the Companies’ residential consumers in order to ensure that NCOLD’s certification benefits them. This interest is different from that of any other party and especially different from that of NCOLD, whose advocacy includes the financial interest of its stockholders.

Second, OCC’s advocacy for consumers will include advancing the position that the certification of NCOLD should ensure that residential consumers will receive adequate service at just and reasonable rates, as required by Ohio law. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities’ rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case concerning the certification of a long distance company that plans to serve residential telephone consumers in Ohio.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that OCC uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁷

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC's Motion to Intervene.

III. MOTION TO SUSPEND THE APPLICATION

The Commission requires that "[a]ny telephone company desiring to offer telecommunication services, other than commercial mobile radio service, in the state of Ohio shall file an application for certification (ACE) with the commission...."⁸ A complete tariff must also be filed with the application.⁹

In addition, a CTS application must include:

- (1) Certificate of good standing and certificate to operate as an out-of-state entity issued by the Ohio secretary of state and, if applicable, fictitious name authorization.
- (2) Full address and telephone number, and if available, e-mail address and web site.
- (3) Verification of compliance with any applicable affiliate transaction requirements.
- (4) Verification that the applicant will maintain accounting records pursuant to generally accepted accounting principles.

⁷ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

⁸ Ohio Adm. Code 4901:1-6-10(A).

⁹ Ohio Adm. Code 4901:1-6-10(B) ("Rule 10(B)").

- (5) Documentation attesting to the applicant's satisfactory technical expertise relative to the proposed service offering(s).
- (6) Documentation indicating the applicant's satisfactory corporate structure, managerial expertise, and ownership.
- (7) Information pertaining to any similar operations provided by the applicant in other states.
- (8) Evidence of notice to the Ohio department of taxation, public utilities tax division, of its intent to provide service.
- (9) Any waivers sought by the applicant, submitted pursuant to rule 4901:1-6-02 of the Administrative Code.
- (10) Documentation attesting to the applicant's financial viability including, at a minimum, an actual and pro forma income statement and balance sheet.¹⁰

In Rule 10(B), the Commission warns applicants that a certification application filed without a completed tariff and all necessary exhibits “may be subject to immediate dismissal pursuant to paragraph (A)(3) of rule 4901:1-6-06 of the Administrative Code.”

The Application, as filed, does not contain many of the requirements of Rule 10(D). NCOLD did not file a tariff or a certificate of good standing issued by the Ohio Secretary of State, and stated that they would be filed late.¹¹ It has been more than two weeks since the Application was filed and NCOLD has yet to docket these exhibits. In addition, the Application does not include a verification of compliance with any applicable affiliate transaction requirements or verification that NCOLD will maintain accounting records pursuant to generally accepted accounting principles. The

¹⁰ Ohio Adm. Code 4901:1-6-10(D) (“Rule 10(D)”).

¹¹ See Application, exhibit list. NCOLD also mentions that a proposed notice (Exhibit D) would also be filed late, but it is unclear what notice NCOLD is referring to. The only notice required by Rule 10 is a notice to the Ohio Department of Taxation (Ohio Adm. Code 4901:1-6-10(B)(8)), which NCOLD has submitted. NCOLD listed an Exhibit A as “inapplicable,” but did not state what “Exhibit A” would have included and why NCOLD deems it to be “inapplicable.”

Application also does not contain documentation attesting to NCOLD's financial viability including, at a minimum, an actual and pro forma income statement and balance sheet. Although NCOLD refers to the merger proceeding for this information,¹² no income statements or balance sheets have been docketed in that proceeding.

The Commission should at least suspend the Application, pursuant to Rule 7, so that the Application is not automatically approved under the PUCO's rules. Under Ohio Adm. Code 4901:1-6-10(H)(2), "[a]bsent full or partial suspension, applications seeking certification as a telephone company will be approved in accordance with the thirty-day automatic approval process described in rule 4901:1-6-08 of the Administrative Code." Rule 7(A) allows for suspension of "any process" under Chapter 4901:1-6.

Because the Application is not complete, the PUCO and OCC have not had an opportunity to analyze the service that may be offered under the Application. In addition, the incompleteness of the Application denies OCC the opportunity for meaningful discovery, as required by R.C. 4903.082. Thus, the Commission should suspend the Application.¹³

In addition, the Application should be suspended because it is dependent on Commission approval of the Companies' merger in Case No. 09-454. Absent PUCO approval of that transaction, certification of NCOLD would be meaningless.¹⁴ Until the PUCO rules in that proceeding, the Commission should suspend the Application.

¹² Application, Exhibit C.

¹³ OCC reserves the right to later move to dismiss the Application under Rule 10(B).

¹⁴ On June 10, 2009, OCC filed a motion in Case No. 09-454 to suspend the automatic approval process of that proceeding.

IV. MOTION TO CONSOLIDATE

The Commission has determined that consolidating cases furthers judicial economy if a determination in one case directly affects the outcome of the other case(s).¹⁵ As discussed in Section III, the result in this proceeding depends on the outcome of Case No. 09-454 and is thus inextricably intertwined with the merger proceeding. This case should be consolidated with Case No. 09-454.

V. CONCLUSION

OCC meets the criteria for intervention, and thus OCC's Motion to Intervene should be granted. In addition, OCC has shown that the Application does not comply with the PUCO's requirements for certification applications. The Commission should thus suspend the Application. Further, because the outcome of this proceeding depends on PUCO approval of the merger, this case should be consolidated with Case No. 09-454.

Respectfully submitted,

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¹⁵ See *In the Matter of the Complaint of the City of Huron, Complainant, v. Ohio Edison Company, Respondent; In the Matter of the Applications of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Retail Transition Cost Recovery of Nonbypassable Generation Transition Charges and Regulatory Transition Charges*, Case Nos. 03-1238-EL-CSS, 03-1445-EL-ATA, 03-1446-EL-ATA, Case No. 03-1447-EL-ATA, Entry (August 13, 2003).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motions by the Office of the Ohio Consumers' Counsel was electronically served on the persons listed below, this 15th day of June 2009.

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Summary: Motion Motion to Intervene, Motion to Suspend the Application, and Motion to Consolidate by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.