

**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.)

**REPLY TO APPLICANT’S MEMORANDUM IN RESPONSE
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

This case involves the review of the reasonableness and lawfulness of the certification of New Communications Online and Long Distance, Inc. (“NCOLD”) as a Competitive Telecommunications Service provider in Ohio. NCOLD seeks certification “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”).¹

On June 15, 2009, the Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of the Companies’ residential utility consumers in Ohio, filed a motion to intervene in this proceeding.² In the same document, OCC also moved to suspend the Application, pursuant to Ohio Adm. Code 4901:1-6-07, because it does not contain all the exhibits required by the Public Utilities Commission of Ohio (“Commission”) or

¹ Application (May 29, 2009) (“Application”), Exhibit C. The merger is pending in Case No. 09-454-TP-ACO.

² The Motion to Intervene was filed pursuant to R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and Ohio Adm. Code 4901:1-6-10(H)(1).

“PUCO”), and because the certification of NCOLD would not be necessary if the PUCO does not approve the Companies’ merger.³ In addition, OCC moved to consolidate this case with the merger proceeding.

On June 22, 2009, NCOLD filed a Memorandum in Response to OCC’s motions.⁴ NCOLD objects only to OCC’s intervention in this proceeding.⁵ NCOLD asserts that OCC has not alleged any adverse affect on Ohio consumers, and thus should be denied intervention because, NCOLD claims, OCC has not stated grounds for intervention.⁶ NCOLD, however, is wrong.

As discussed herein, OCC meets the criteria for intervention under R.C. 4903.221. As the Commission found last year in the CenturyTel-Embarq merger case,⁷ OCC should be granted intervention here because residential consumers may be adversely affected by the proposed transaction and disposition of this proceeding may impair OCC’s ability to protect that interest.⁸

II. OCC MEETS THE STANDARD FOR INTERVENTION UNDER R.C. 4903.221.

In opposing OCC’s intervention in this proceeding, NCOLD claims that OCC has not stated grounds for intervention. NCOLD contends that OCC has not established that

³ The Commission suspended the Application in an Entry issued on June 19, 2009.

⁴ Although the memorandum in response was identified as being filed by “Joint Applicants,” the document does not specify who the “Joint Applicants” are in this proceeding, and refers only to NCOLD (i.e., “NewLD”) throughout the argument portion of the document. In this reply, OCC refers only to NCOLD.

⁵ NCOLD does not contest consolidation of this case with the merger proceeding and does not object to the suspension of the Application, which the PUCO has already ordered. Memorandum in Response at 4.

⁶ Id. at 2-4.

⁷ *In the Matter of the Joint Application of CenturyTel, Inc. and Embarq Corporation for Approval of Transfer of Control of United Telephone Company of Ohio, United Telephone Company of Indiana, Inc., and Embarq Communications Inc.*, Case No. 08-1267-TP-ACO.

⁸ Id., Entry (December 17, 2008) (“CenturyTel/Embarq Entry”) at 3.

the transaction would adversely affect Verizon’s customers.⁹ NCOLD, however, offers an overly narrow interpretation of the standard of intervention.

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. (Emphasis added.) This language is broad, and does not require OCC to specify issues of concern – especially at this point in the proceeding, where NCOLD has provided little supporting information other than general promises concerning how customers’ service would be provided if the Application is approved.

For example, NCOLD asserts that “[t]he transaction will not change the rates, terms, conditions, availability or quality of the regulated, tariffed services provided to Ohio consumers.”¹⁰ But, as OCC noted, NCOLD did not file a tariff with the Application;¹¹ indeed, NCOLD has yet to docket a tariff, one month after the Application was filed. Thus, there is nothing to support NCOLD’s promise that approval of the Application would not affect customers’ service.

In fact, Frontier’s recent rate increase for some local services in the Cooney exchange raises questions about whether “the transfer of Verizon North will have no direct impact on residential customers of Verizon North....”¹² On June 2, 2009, Frontier exercised its elective alternative regulation authority and raised rates of per-use Tier One Non-Core services by 9% to 300% for customers in the Cooney exchange,¹³ and now has

⁹ Memorandum in Response at 2-4.

¹⁰ Id. at 3.

¹¹ Motion at 5.

¹² Memorandum in Response at 2-3.

¹³ See Case No. 90-5009-TP-TRF, Tariff for Frontier Communications of Michigan, Inc., to increase rates for certain residential a la carte features (June 2, 2009).

higher rates for those services than Verizon does for similar services. Even if NCOLD were to simply adopt Verizon's current terms and conditions of service, NCOLD does not guarantee how long the status quo would be maintained.

Finally, NCOLD cites to two previous transfer of control cases in which the PUCO denied OCC intervention.¹⁴ These decisions, however, were issued before the Ohio Supreme Court's declaration that intervention in PUCO cases "ought to be liberally allowed...",¹⁵ and thus their value as precedent is suspect, at best.

The Commission instead should follow its decision in the more recent CenturyTel-Embarq merger proceeding, in which the Commission granted OCC's intervention. In that proceeding, CenturyTel/Embarq's arguments against OCC's intervention were similar to those made by NCOLD in this proceeding.¹⁶ The Commission rejected CenturyTel/Embarq's arguments: "[T]he Commission determines that OCC has a real and substantial interest in this proceeding and that it is so situated that disposition of this proceeding may impair its ability to protect that interest."¹⁷ The Commission should make the same finding here, and grant OCC's Motion to Intervene.

III. CONCLUSION

NCOLD is wrong about the standard for intervention in PUCO proceedings. OCC has made the necessary showing for intervention under R.C. 4903.221 and the Commission's rules. OCC's Motion to Intervene should be granted.

¹⁴ Id. at 3.

¹⁵ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶ 20 (2006).

¹⁶ Compare Memorandum in Response at 2-4 with Case No. 08-1267-TP-ACO, Memorandum Contra of Embarq and CenturyTel (December 10, 2008) at 1-5.

¹⁷ CenturyTel/Embarq Entry at 3.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record

David C. Bergmann

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

etter@occ.state.oh.us

bergmann@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply by the Office of the Ohio Consumers' Counsel was electronically served on the persons listed below, this 29th day of June 2009.

/s/ Terry L. Etter _____
Terry L. Etter
Assistant Consumers' Counsel

SERVICE LIST

DUANE W. LUCKEY
Assistant Attorney General
Chief, Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3793
duane.luckey@puc.state.oh.us

A. RANDALL VOGELZANG
General Counsel
Verizon Great Lakes Region
600 Hidden Ridge, HQE02J27
Irving, Texas 75038
randy.vogelzang@verizon.com

THOMAS E. LODGE
CAROLYN S. FLAHIVE
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215-6101
thomas.lodge@thompsonhine.com
carolyn.flahive@thompsonhine.com

KEVIN SAVILLE
Associate General Counsel
Frontier Communications
2378 Wilshire Blvd.
Mound, Minnesota 55364
Kevin.Saville@frontiercorp.com

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