

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Frontier)
North, Inc. for a Commission Determination) Case No. 13-1528-TP-BLS
Pursuant to Ohio Revised Code Section)
4927.12(C)(3).)

**MOTION TO INTERVENE
AND
MOTION TO DENY PART OF FRONTIER'S APPLICATION
AFFECTING CUSTOMERS IN 12 EXCHANGES
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-7964 (Etter direct)
etter@occ.state.oh.us

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The Office of the Ohio Consumers’ Counsel (“OCC”) moves to intervene in this case where the Public Utilities Commission of Ohio (“PUCO”) will consider authorizing increases in the rates residential consumers pay for basic local exchange service (“basic service”)¹ in 223 exchanges in the Ohio service territory of Frontier North, Inc.² OCC files on behalf of Frontier’s residential customers.³

In addition, OCC moves the PUCO to deny the Application for 12 exchanges.⁴ The documentation Frontier filed to support its Application does not show that two alternative providers are offering competing service to its basic service in the 12 exchanges, as required by R.C. 4927.12(C)(3) and Ohio Adm. Code 4901:1-6-

¹ “Basic service” refers to stand-alone basic service, i.e., basic service not sold as part of a package or bundle of services.

² See Application (June 28, 2013) (“Application”), Exhibit 1.

³ See R.C. Chapter 4911; R.C. 4903.221; Ohio Adm. Code 4901-1-11.

⁴ Amesville, Amsterdam, Baltic, Bergholz, Bowerston, Cooperdale, Dillonvale-Mt. Pleasant, Jewett, LeTart Falls, Scio, Sinking Springs and Summerfield. OCC files the motion to deny pursuant to Ohio Adm. Code 4901-1-12.

14(C)(1)(c)(ii). Thus, the Application does not meet the requirements for basic service pricing flexibility set forth in the statute and the PUCO's rules.

There is good cause for granting OCC's motions, as further explained in the following Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Phone: 614-466-7964 (Etter direct)

etter@occ.state.oh.us

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In 2009, the PUCO granted Verizon North, Inc. the authority to raise the rates it charged customers for basic service in 21 exchanges.⁵ In 2010, the PUCO approved a Stipulation allowing Frontier to acquire the Verizon service territory in Ohio.⁶ Among other things, the Stipulation prohibited Frontier from pursuing the right to raise its residential basic service rates until it met the Stipulation’s broadband commitment. In a letter dated May 6, 2013 and filed in the 09-454 docket, Frontier signified that it had met the broadband commitment. In this proceeding, Frontier seeks the authority to raise the rates its residential customers pay for basic service in the 223 exchanges that were not approved in the 2009 Order.⁷

As shown herein, OCC meets the criteria for intervention in this proceeding and the PUCO should grant OCC’s motion to intervene. In addition, the PUCO should deny

⁵ *In the Matter of the Application of Verizon North, Inc. for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 08-989-TP-BLS, Order (March 18, 2009).

⁶ *In the Matter of the Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc. and Verizon Communications Inc. for Consent and Approval of a Change in Control*, Case No. 09-454-TP-ACO, Finding and Order (February 11, 2010).

⁷ Frontier received authority to raise its small business basic service rates in Case No. 12-3127-TP-BLS.

the Application for 12 exchanges in which Frontier has failed to show that at least two alternative providers offer service competing with the Company's basic service.

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 Ohio's residential consumers may be "adversely affected" by this case, especially if the consumers were unrepresented in a proceeding that could give Frontier the authority to raise the rates it charges residential customers for basic service. 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 Frontier's residential consumers to ensure that the proceeding does not result in unreasonable or unlawful rate increases that would harm them. This interest is different from those of any other party and especially different from those of Frontier, whose advocacy includes the financial interest of its stockholders.

Second, OCC's advocacy for consumers will include advancing the position that residential consumers' rates should be "just and reasonable," pursuant to R.C. 4905.22,

among other statutes. OCC's position is therefore directly related to the merits of this proceeding 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 will significantly contribute to the full development and equitable resolution of the factual issues in this proceeding. 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 proceeding where Frontier is seeking the ability to raise the rates it charges its residential basic service customers.

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. Further, Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO 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 two appeals 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.⁸

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 PUCO should grant OCC's motion to intervene in this proceeding.

III. MOTION TO DENY THE APPLICATION FOR 12 EXCHANGES

The PUCO should find that the Application is insufficient to grant Frontier authority to increase its basic service rates in at least 12 exchanges. Frontier has the burden of proof that the Application meets the criteria in the statute and the PUCO's rules.

R.C. 4927.12(C)(3) sets forth the process by which an incumbent telephone company may receive authority to increase its basic service rates in an exchange. Under R.C. 4927.12(C)(3)(a), the PUCO may grant such authority if the telephone company applies for the authority, and the PUCO "determines that the application demonstrates that two or more alternative providers offer, in the exchange area, competing service to the basic local exchange service offered by an incumbent local exchange carrier in the

⁸ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶ 13-20 (2006).

exchange area, regardless of the technology and facilities used by the alternative provider, the alternative provider's location, and the extent of the alternative provider's service area within the exchange area."⁹ Under Ohio Adm. Code 4901:1-6-14(C)(1)(c)(ii), the PUCO may issue an Order finding that the Application is insufficient to grant the incumbent company the authority requested.

OCC reviewed the documentation Frontier submitted with the Application. As with the application Frontier submitted in the 12-3127 case, for many exchanges it is unclear as to the providers Frontier is using in this Application to make the demonstration required under the statute and the PUCO's rules. For some exchanges, the alleged competitors named in the matrix of exchanges Frontier provided in the Application do not match the competitors shown in the documentation for those exchanges. For example, the matrix names AT&T Wireless, Vonage and Phone.com as competitors in the Idaho exchange, but the documentation Frontier provided for that exchange supports only Verizon Wireless and Sprint Wireless.

The same holds true for the cover sheets for the documentation of several exchanges in Exhibit 2 to the Application. For example, the cover sheet for the Sinking Springs exchange names Verizon Wireless and Sprint Wireless as alternative providers, but Frontier provided documentation only for AT&T Wireless and Sun ISP.

Thus, OCC will address only the actual documentation Frontier submitted in Exhibit 2 to the Application. A review of the documentation reveals that Frontier has not shown that it meets the competitive test in at least 12 exchanges: Amesville, Amsterdam, Baltic, Bergholz, Bowerston, Cooperdale, Dillonvale-Mt. Pleasant, Jewett, LeTart Falls,

⁹ See also Ohio Adm. Code 4901:1-6-14(C)(1)(c)(ii).

Scio, Sinking Springs and Summerfield. These are exchanges for which Frontier has provided documentation regarding one or more of the following services: Sun ISP; Skype; Clear Rate Communications; and American Broadband & Telecommunications (“AB&T”).¹⁰ The table below summarizes Frontier’s documentation submitted in Exhibit 2 of the Application for each exchange:

Exchange Name	Alleged Providers
Amesville	Sprint, Sun ISP, Skype, AB&T
Amsterdam	Clear Rate, Sun ISP
Baltic	AT&T Wireless, Sun ISP, Clear Rate
Bergholz	Clear Rate, Sun ISP
Bowerston	Clear Rate, Verizon Wireless, Sun ISP
Cooperdale	Verizon Wireless, Sun ISP
Dillonvale-Mt. Pleasant	Comcast, Sun ISP
Jewett	AT&T Wireless, Sun ISP
LeTart Falls	AT&T Wireless, Sun ISP
Scio	AT&T Wireless, Sun ISP
Sinking Springs	AT&T Wireless, Sun ISP
Summerfield	AT&T Wireless, Sun ISP

As discussed below, the documentation does not make the showing required by R.C. 4927.12(C)(3)(a). The services are not alternative providers in the exchanges for purposes of basic service pricing flexibility. Eliminating these services from consideration would leave no more than one alternative provider in each exchange. Thus,

¹⁰ Some of these providers are also named as alternative providers for other exchanges, but in those exchanges Frontier also provided documentation for at least two other providers that the PUCO has deemed to be sufficient for basic service pricing flexibility purposes. Thus, eliminating the providers discussed herein from those exchanges would have no bearing on Frontier’s application for those exchanges. Even though OCC does not discuss those exchanges in this Motion, that does not diminish OCC’s objections to Frontier’s documentation discussed herein.

Frontier has not shown there are at least two alternative providers competing with its basic service in the 12 exchanges. The PUCO should thus deny the Application for these 12 exchanges.

Sun ISP and Skype. Frontier provided documentation contending that it meets the competitive test through the presence of Voice over Internet Protocol (“VoIP”) services Sun ISP in the 12 exchanges and Skype only in the Amesville exchange. To support this contention, Frontier submitted copies of a printout of the websites for the two services. The documentation, however, only describes the companies and generally discusses their services. It does not show that either service is offered in the specific exchanges.

The basic service pricing flexibility available in Ohio law is exchange specific. The telephone company thus must show that alternative providers are offering service specifically “in the exchange area” before the PUCO may grant authority for pricing flexibility under R.C. 4927.12(C). Frontier has not made this showing for Skype and Sun ISP.

The specific exchange name does not appear anywhere in the documentation Frontier uses to support Sun ISP and Skype as alternative providers. This is a departure from the documentation the PUCO has deemed acceptable to show that a VoIP provider is an alternative provider in an exchange to meet the statutory competitive test. In their applications for basic service pricing flexibility under R.C. 4927.12(C)(3), other telephone companies have named VoIP providers as alternative providers.¹¹ Unlike

¹¹ See *United Telephone Company of Ohio dba CenturyLink*, Case No. 12-2750-TP-BLS, Application (October 18, 2012), Exhibit 1; *Pattersonville Telephone Company*, Case No. 12-1110-TP-BLS, Application (March 29, 2012), Exhibit E.

Frontier, they used screen shots from each provider’s website confirming that the provider could serve an actual telephone number from the specified exchange.¹²

Frontier’s documentation shows only that Sun ISP and Skype are available *somewhere* via satellite, not that they actually offer their service to customers in the specific exchanges named in the Application.

And although Frontier emphasizes that Sun ISP states on its website that customers “may request for Sun ISP’s availability” in their area, and that it “can provide the service in 10 business days,”¹³ these statements are not conclusive that Sun ISP actually offers service in a given exchange. Although customers may request availability of the service, Sun ISP does not guarantee that the service **will** be available to them. Thus, there is no proof that Sun ISP offers service in any of the exchanges.

In addition, neither service can be considered a competitor to Frontier’s basic service because each lacks a key element of basic telephone service: access to 9-1-1 emergency services.¹⁴ Neither Sun ISP nor Skype guarantees that customers will be able to reach 9-1-1 in an emergency. Skype explicitly tells customers that it does not replace wireline telephone service:

Skype Software is not a replacement for your ordinary mobile or fixed line telephone. In particular, apart from in very limited circumstances, the Software does not allow you to make emergency calls to emergency services. You must make alternative communication arrangements to ensure you can make emergency calls if necessary.¹⁵

¹² Case No. 12-2750-TP-BLS, Application, Exhibit 2 (Glenmont and McConnellsville); Case No. 12-1110-TP-BLS, Application, Exhibit E

¹³ Memorandum in Support of Application at [3].

¹⁴ See R.C. 4927.01(A)(1)(b)(iv).

¹⁵ <https://support.skype.com/en/faq/FA29/can-i-call-an-emergency-number-from-skype> (emphasis added).

Sun ISP apparently is attempting to comply with federal directives to make 9-1-1 service available to its customers, but the ability to make emergency calls through its service is not widely available.¹⁶ In addition, Sun ISP warns its customers using its emergency calling service that they assume a risk that emergency calls will not be completed:

SunISP does offer an Emergency Calling Service that is different in a number of important ways from traditional 911 services or SunISP E911 services. For customers that do not have E911 capability, when you dial 911, your call is routed from the SunISP network to the Public Safety Answering Point (“PSAP”) or local emergency service personnel using the address that you provided to SunISP. You acknowledge and understand that **when you dial 911 from your SunISP Equipment you will be routed to the general or administrative telephone number for the PSAP or local emergency service provider, and will not necessarily be routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls using traditional 911 dialing.** Additionally, some PSAPs may from time to time refuse to accept calls from VoIP providers such as SunISP. As described herein, **this Emergency Calling Service dialing currently is NOT the same as traditional 911 or E911 dialing, and at this time, does not necessarily include all of the capabilities of traditional 911 dialing.**¹⁷

OCC is not advocating that a competitor’s service must be equivalent, or even comparable, to the basic service defined in R.C. 4927.01(A)(1)(b). But the PUCO should acknowledge that a service lacking the ability for customers to reach emergency services is not actually a competing service to the incumbent carrier’s basic service, as required by R.C. 4927.12(C)(3)(a).

The PUCO has recognized the importance for Lifeline providers to ensure that customers have access to emergency services, regardless of the technology used to

¹⁶ <http://www.sun-isp.com/terms.php>.

¹⁷ Id. (bolded emphasis added; all caps emphasis in the original).

provide the service. In the Entry initiating the competitive Lifeline docket, the Commission stated:

While the Commission recognizes that inherent differences may persist between postpaid and prepaid Lifeline service, it strongly believes that the provision of Lifeline to eligible subscribers should be competitively and technologically neutral. Providers offering prepaid Lifeline service should provide eligible subscribers with comparable access to emergency and community services as well as reliable, high-quality and affordable voice service as provided under traditional postpaid Lifeline service offerings.¹⁸

The PUCO has considered access to 9-1-1 services such an essential part of telephone service that it has approved prepaid Lifeline service applications specifically on the condition that customers have 9-1-1 and E9-1-1 access regardless of the customers' activation status or the number of minutes remaining on their account.¹⁹ A service that cannot guarantee access to emergency services is not a competing service to the incumbent's basic service.

Frontier's documentation does not show that either Skype or Sun ISP phone service is available in any of the 12 exchanges. The PUCO should not give Frontier authority to raise basic service rates for residential customers in these exchanges.

¹⁸ *In the Matter of the Commission Investigation into the Provision of Prepaid Lifeline Services by Competitive Eligible Telecommunications Carriers*, Case No. 10-2377-TP-COI, Entry (November 3, 2010) at 2.

¹⁹ See *In the Matter of the Petition of i-wireless, LLC dba K-Wireless LLC dba Access Wireless for Designation as a Low-Income Competitive Eligible Telecommunications Carrier*, Case No. 11-571-TP-UNC, Finding and Order (November 22, 2011) at 10; *In the Matter of the Application of Nexus Communications dba Reachout Wireless for Designation as an Eligible Telecommunications Carrier in the State of Ohio*, Case No. 10-432-TP-UNC, Finding and Order (June 22, 2011) at 8; *In the Matter of the Application of Virgin Mobile USA, L.P. dba Assurance Wireless for Designation as an Eligible Telecommunications Carrier in the State of Ohio*, Case No. 10-429-TP-UNC, Finding and Order (May 19, 2011) at 6; *In the Matter of the Application of Cincinnati Bell Wireless LLC for Designation as an Eligible Telecommunications Carrier in the State of Ohio*, Case No. 10-2449-TP-UNC, Finding and Order (December 29, 2010) at 9.

Clear Rate Communications. Frontier names Clear Rate as an alternative provider in the Amsterdam, Baltic and Bowerston exchanges. For support, Frontier submitted copies of a portion of a page from Clear Rate’s tariff which states: “Clear Rate offers service in the Ohio exchanges and local calling areas in their entirety of AT&T Ohio and Verizon. ... Clear Rate offers service in the footprints of AT&T Ohio and Verizon, as noted in the following service area maps.” This is insufficient to show that Clear Rate offers service competing with Frontier’s basic service to residential customers specifically in the Amsterdam, Baltic and Bowerston exchanges.

R.C. 4927.12(C)(3)(a) requires that in order to be granted basic service pricing flexibility, the application must demonstrate “that two or more alternative providers offer, **in the exchange area**” service competing with the incumbent’s basic service. (Emphasis added.) The presence of an alternative provider in a specific exchange should not be based on a general statement in a tariff. There should be a specific link between the provider and the exchange,²⁰ such as information showing that the carrier will port a number in the exchange.

Frontier has the burden of proof in this proceeding. Its documentation, however, does not show that Clear Rate is an alternative provider in the Amsterdam, Baltic and Bowerston exchanges.

American Broadband & Telecommunications. Frontier names AB&T as an alternative provider in the Amesville and Bergholz exchanges. For support, Frontier

²⁰ The phrase “Clear Rate offers service in the Ohio exchanges and local calling areas in their entirety of AT&T Ohio and Verizon” is unclear. The phrase refers only to AT&T Ohio and Verizon (now, Frontier), but exchanges have local calling areas that include exchanges of other telephone companies in Ohio, such as CenturyLink and Windstream. The tariff makes no claim to offer service in other companies’ territories. Thus, it is unclear what is meant by “in their entirety.”

submitted copies of portions of pages from AB&T's tariff. For Amesville, the tariff shows that the exchange is part of the local calling area for the Athens exchange, and for Bergholz the tariff shows the exchange is part of the Steubenville exchange's local calling area. This documentation is insufficient to show that AB&T is an alternative provider of residential service in the Amesville and Bergholz exchanges.²¹

It is a big leap to assume that any provider offers service to customers in an exchange simply because it is within the local calling area of another exchange. Local calling areas mean only that there is no additional charge for calls from one exchange to another. AB&T's tariff pages show only that AB&T offers free calling from Athens to Amesville and from Steubenville to Bergholz. All that Frontier has shown is that AB&T provides service in the Athens and Steubenville exchanges. It has not shown that AB&T will be the service provider for residents in either Amesville or Bergholz.

Further, the Steubenville exchange is not even part of Frontier's service territory. The exchange is served by AT&T Ohio. Thus, Frontier has made no showing whatsoever that AB&T offers service in the Bergholz exchange.

Frontier has not shown that AB&T is an alternative provider of basic service for residential customers in the Amesville and Bergholz exchanges. The PUCO should reject Frontier's contention that AB&T is an alternative provider competing with Frontier's basic service in these exchanges.

²¹ In a similar vein for the Amesville exchange, the documentation regarding Sprint includes a map of all of southeastern Ohio with Amesville apparently denoted by the likeness of a pushpin. The point of the pin, however, is on the edge of an area showing no coverage for Sprint. The documentation thus is inconclusive at best regarding Sprint's presence in the Amesville exchange.

IV. CONCLUSION

OCC has met the statutory and administrative tests for intervention in this proceeding. The PUCO should grant OCC's Motion to Intervene.

In addition, the PUCO should find that Frontier has not made the necessary showing of competition in the 12 exchanges discussed herein. Eliminating Sun ISP, Skype, Clear Rate and AB&T as alternative providers in the 12 exchanges would have the following effect on Frontier's Application:

Exchange Name	Alleged Providers
Amesville	Sprint, Sun ISP , Skype , AB&T
Amsterdam	Clear Rate , Sun ISP
Baltic	AT&T Wireless, Sun ISP , Clear Rate
Bergholz	Clear Rate , Sun ISP
Bowerston	Clear Rate , Verizon Wireless, Sun ISP
Cooperdale	Verizon Wireless, Sun ISP
Dillonvale-Mt. Pleasant	Comcast, Sun ISP
Jewett	AT&T Wireless, Sun ISP
LeTart Falls	AT&T Wireless, Sun ISP
Scio	AT&T Wireless, Sun ISP
Sinking Springs	AT&T Wireless, Sun ISP
Summerfield	AT&T Wireless, Sun ISP

The documentation Frontier submitted to support the Application does not demonstrate that two alternative providers offer service that competes with Frontier's basic service in any of the 12 exchanges. Frontier has not carried its burden of proof in this proceeding, and the PUCO should deny the Application for the 12 exchanges.

To protect consumers, the PUCO should grant OCC's Motions.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Phone: 614-466-7964 (Etter direct)

etter@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motions was served by electronic mail to the persons listed below, on this 22nd day of July 2013.

/s/ Terry L. Etter

Terry L. Etter
Assistant Consumers' Counsel

SERVICE LIST

William Wright
Assistant Attorney General
Chief, Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793

Rachel Winder
Frontier North, Inc.
1300 Columbus-Sandusky Rd North
Marion, Ohio 43302
rachel.winder@ftr.com

Cassandra Cole
Frontier North, Inc.
1300 Columbus-Sandusky Rd North
Marion, Ohio 43302
cassandra.cole@ftr.com

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

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Summary: Motion Motion to Intervene and Motion to Deny Part of Frontier's Application Affecting Customers in 12 Exchanges by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.