

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Petition of AT&T Ohio                    )  
for Order Confirming Relinquishment of                ) Case No. 17-1948-TP-UNC  
Eligible Telecommunications Carrier                    )  
Designation in Specified Areas and                    )  
Request For Waiver.   )

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**REPLY TO AT&T OHIO’S MEMORANDUM CONTRA  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL  
AND  
THE GREATER EDMONT COMMUNITY COALITION**

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**I. INTRODUCTION**

Lifeline is a telephone assistance program that makes basic local telephone service more affordable for income-eligible families across Ohio.<sup>1</sup> Ohioans qualify for Lifeline if their household income is at or below 135 percent of the federal poverty guidelines, or if they participate in an eligible low-income assistance program.<sup>2</sup> This case is about protecting 10,482 low-income Ohioans who may lose their Lifeline service provider.<sup>3</sup>

AT&T Ohio has asked the Public Utilities Commission of Ohio (“PUCO”) for an order confirming that it may stop providing Lifeline service to consumers in those areas where it does not receive money from the federal Connect America Fund II to provide

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<sup>1</sup> See <http://www.puco.ohio.gov/be-informed/consumer-topics/lifeline-telephone-assistance-program-help-with-paying-your-telephone-bill/#sthash.vmR94oaj.dpbs>.

<sup>2</sup> See *id.* The qualifying programs are Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Public Housing Assistance/Section 8, and Veterans Pension (including Survivors Pension).

<sup>3</sup> See Petition (September 7, 2017), ¶15

broadband.<sup>4</sup> AT&T Ohio is requesting to terminate Lifeline service to consumers in those areas as early as March 16, 2018.<sup>5</sup> The request could harm low-income consumers who receive Lifeline service in 118 of AT&T Ohio’s 192 exchanges.<sup>6</sup>

On December 20, 2017, the Office of the Ohio Consumers’ Counsel and Greater Edgemont Community Coalition (collectively, “Consumer Advocates”) filed a motion asking the PUCO to hold this case in abeyance. The motion was prompted by a Federal Communications Commission (“FCC”) rulemaking that proposes to limit Lifeline funding to facilities-based providers of broadband service that can also provide voice service to customers.<sup>7</sup> Because ten of the 11 competitive Lifeline companies identified in the Petition are not facilities-based,<sup>8</sup> the combination of AT&T Ohio’s petition and the FCC’s rulemaking could leave thousands of low-income Ohioans without access to affordable telephone service.

To avoid this predicament, the Consumer Advocates asked the PUCO to refrain from acting on AT&T Ohio’s petition until the FCC completes its rulemaking.<sup>9</sup> The Consumer Advocates also urged the PUCO to seek comments from the competitive Lifeline companies to determine the effect of the FCC’s proposal on their Ohio customers.

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<sup>4</sup> See *id.*, ¶2.

<sup>5</sup> *Id.* at 1.

<sup>6</sup> See *id.*, Exhibit A.

<sup>7</sup> See *In the Matter of Lifeline and Link Up Reform Modernization*, FCC WC Docket No. 11-42, et al., Notice of Proposed Rulemaking (adopted November 16, 2017, released December 4, 2017) (“NPRM”), ¶¶67-73.

<sup>8</sup> See Motion at 2-3.

<sup>9</sup> *Id.* at 3.

On January 4, 2018, AT&T Ohio filed a memorandum contra to the Consumer Advocates' Motion. Per the PUCO's rules,<sup>10</sup> the Consumer Advocates reply to AT&T Ohio's memorandum contra. As discussed herein, AT&T Ohio's arguments against the Motion are flawed. The public interest is best served by granting the Consumer Advocates' Motion.

## II. REPLY

### A. The availability of other AT&T Ohio services is irrelevant to low-income customers who cannot afford the services.

AT&T Ohio contends that its Lifeline customers will still be able to use its other services after it has stopped offering Lifeline. AT&T Ohio states that if its Lifeline customers "still prefer to use AT&T Ohio rather than obtain a Lifeline discount from another ETC, they will be able to do so (but without the Lifeline discount), *because AT&T Ohio will not withdraw any service until it first obtains all necessary regulatory approvals from this Commission and the FCC.*"<sup>11</sup> But this misses the point.

For many, if not most, low-income Ohioans, subscribing to Lifeline is not a "preference." It is the only telephone service they can afford. These individuals are the poorest of poor. For instance, a family of four qualifies for Lifeline if their annual pre-tax income is no more than \$33,210<sup>12</sup> – about \$2,700 per month. After taxes, that amounts to about \$2,300 per month.<sup>13</sup> The average two-bedroom apartment in Ohio rents

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<sup>10</sup> Ohio Adm. Code 4901-1-12(B)(2).

<sup>11</sup> Memorandum Contra at 1-2 (emphasis in original). *See also id.* at 4-5. An ETC is an Eligible Telecommunications Carrier, i.e., a carrier that is eligible to provide Lifeline service.

<sup>12</sup> *See* <http://www.puco.ohio.gov/be-informed/consumer-topics/lifeline-telephone-assistance-program-help-with-paying-your-telephone-bill/#sthash.vmR94oaj.dpbs>.

<sup>13</sup> Assuming a 15 percent federal tax rate and a three percent state tax rate.

for \$700 per month.<sup>14</sup> This leaves little money for a Lifeline-eligible family of four to purchase food, utilities (i.e., electricity, heat, water, and sewer), medicine, clothing, transportation, and other essentials. For these families, the \$9.20 per month Lifeline discount is often the difference between having phone service and not having it.

It does not matter to these customers that AT&T Ohio is not seeking to discontinue other more expensive voice services. What matters is that AT&T Ohio is seeking to discontinue a more affordable, discounted voice service to more than 10,000 Ohioans who cannot afford AT&T Ohio's other higher priced services. If these consumers lose Lifeline service, they may have to do without phone service that connects them to jobs, healthcare providers, their children's schools, and other vital services in their community.

The reality is that the only real alternative for customers receiving AT&T Ohio's Lifeline service in Ohio is another company's Lifeline service. As discussed below, the existence of most Lifeline providers may be threatened by the FCC's proposal to eliminate federal funding for Lifeline providers that do not use their own facilities. The PUCO should carefully consider the ramifications of the FCC's proposal on Ohioans who may be harmed by lack of federal funding for Lifeline service.

**B. There is a real concern that the FCC's rulemaking may impair the PUCO in fulfilling its statutory obligation to ensure that Ohioans will not lose Lifeline service.**

The PUCO's specific obligations under federal law to protect consumers are paramount to whether AT&T Ohio meets the standard for relinquishing its status as a Lifeline provider. Section 214(e)(4) of the U.S. Code requires that before allowing a

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<sup>14</sup> See <https://www.apartmentlist.com/rentonomics/february-2015-ohio-rental-price-monitor/>.

carrier to cease providing Lifeline, the PUCO must require the remaining provider(s) to ensure that all Lifeline customers served by the relinquishing carrier will continue to be served. The law also requires that the remaining Lifeline provider(s) receive sufficient notice to allow the purchase or construction of adequate facilities to serve the customers, and have up to one year to purchase or construct the facilities.

AT&T Ohio contends that the PUCO's statutory obligation to protect Ohioans from losing their Lifeline service is not a concern in this case.<sup>15</sup> AT&T Ohio bases this position on the supposed continuation of service to consumers in the affected area by other Lifeline providers.<sup>16</sup> But as discussed in the Motion, most of those providers might not continue to provide Lifeline service to customers if they lose federal funding under the FCC's proposal.<sup>17</sup> Hence, the concern about the continued viability of other Lifeline providers to furnish service to low-income customers in Ohio is real.

AT&T Ohio also attempts to downplay the effect of the FCC's rulemaking on Lifeline service in Ohio. AT&T Ohio points to the FCC's discussion of a transition period for implementing its proposal.<sup>18</sup> But AT&T Ohio's argument is flawed.

The FCC's transition discussion assumes that a *facilities-based* provider is or will be present to serve Lifeline customers.<sup>19</sup> But as discussed in the Consumer Advocates' Motion, the Petition identifies only one facilities-based competitive Lifeline provider as an alternative to AT&T Ohio's service (Virgin Mobile),<sup>20</sup> and it is not available in all the

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<sup>15</sup> Memorandum Contra at 3.

<sup>16</sup> *Id.*

<sup>17</sup> Motion at 2-3.

<sup>18</sup> Memorandum Contra at 6.

<sup>19</sup> NPRM, ¶71.

<sup>20</sup> Motion at 2-3.

census blocks listed in the Petition.<sup>21</sup> If there is no facilities-based Lifeline provider in an area to serve Lifeline customers, the FCC’s proposed “transition” would not help consumers.

AT&T Ohio also asserts that under 47 U.S.C. § 214(e)(3) the PUCO can force one or more telephone companies to provide Lifeline service to customers in an unserved area.<sup>22</sup> Thus, according to AT&T Ohio, if a future situation arises where no telephone company is willing to provide Lifeline service to customers in an area, the PUCO can require a telephone company to serve customers in that area. In such a situation, the PUCO must determine which company(ies) would be best able to provide Lifeline service to customers in the area and must order the company(ies) to provide the service to customers. But AT&T Ohio overlooks the important last sentence in 47 U.S.C. § 214(e)(3): “Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.”

Under 47 U.S.C. § 214(e)(1)(a), a carrier must offer Lifeline services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services....” But the FCC’s proposal would eliminate funding for Lifeline service provided to customers through resale. This brings us back to a situation where a Lifeline discount would not be available to a customer if the telephone company that is ordered to provide Lifeline does not, or cannot, provide Lifeline over its own facilities.

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<sup>21</sup> See Petition, Exhibit C.

<sup>22</sup> Memorandum Contra at 6.

AT&T Ohio also argues that its affiliated companies have been allowed to stop providing Lifeline service to customers in other states, so it should be allowed to stop providing Lifeline in Ohio.<sup>23</sup> This is not a compelling argument. The PUCO has the statutory obligation to ensure that *Ohio* consumers do not lose Lifeline service. The circumstances in other states have no bearing on that obligation to Ohioans. Further, all the orders cited by AT&T Ohio were issued *before* the FCC released its proposal to eliminate Lifeline support to telephone companies that are not facilities-based. They are not germane to the situation here.

AT&T Ohio gives short shrift to the PUCO's statutory obligation to protect low-income Ohioans from the loss of their Lifeline service. The PUCO should not take its obligation lightly. The PUCO should consider the effect of the FCC's rulemaking on the more than 10,000 consumers who AT&T Ohio no longer wants to serve.

**C. The PUCO should hold this case in abeyance pending the FCC rulemaking, or at least seek public comment, including input from other Lifeline providers regarding the effect of the FCC's rulemaking on their Ohio operations.**

To protect Ohioans who rely on AT&T Ohio's Lifeline service, the Consumer Advocates urged the PUCO to hold this case in abeyance pending the outcome of the FCC's rulemaking.<sup>24</sup> In the alternative, the PUCO should at least seek public comment on the Petition, including comment from the Lifeline providers identified in Exhibit C to the Petition.<sup>25</sup> AT&T Ohio asserts that a comment period is not necessary.<sup>26</sup> AT&T Ohio is wrong.

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<sup>23</sup> *See id.* at 2.

<sup>24</sup> Motion at 3.

<sup>25</sup> *Id.*

<sup>26</sup> Memorandum Contra at 7.

Comment from the public would allow the PUCO to determine the true effect of the Petition on consumers. Such comment is needed in this docket.

Further, comments from other Lifeline providers would not be “speculative,” as AT&T Ohio claims.<sup>27</sup> It is likely that these other providers already have estimated how the loss of federal Lifeline funding would impact their businesses. They could provide the PUCO with valuable insight as to whether other Lifeline providers would be available to provide service to consumers in the areas affected by the Petition.

AT&T Ohio complains that its Petition “has already been pending for four months.”<sup>28</sup> But there is no statutory or regulatory timeframe for the PUCO to review and act on the Petition. Given the Petition’s massive scale – covering 118 of AT&T Ohio’s 192 exchanges and more than 10,000 customers potentially affected – the PUCO should spend considerable time to make sure that Ohioans do not lose Lifeline service.

Before acting on the Petition, the PUCO should have more information on how Ohio will be affected by the FCC’s proposal to eliminate Lifeline funding for non-facilities-based telephone companies. Holding this case in abeyance is the best solution. Receiving public comment is a good alternative.

### **III. CONCLUSION**

Lifeline helps low-income Ohioans to get and maintain telephone service through discounts on monthly bills and installation charges. Without these discounts, many Ohioans could no longer afford telephone service. For these consumers, AT&T Ohio’s higher priced services are not an adequate substitute to Lifeline.

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*



Because only one of the competitive Lifeline providers identified in the Petition uses its own facilities, the FCC's proposal to eliminate Lifeline funding for telephone companies that do not serve customers with their own facilities could reduce the number of Lifeline providers serving low-income customers in Ohio. This would mean that if AT&T Ohio is allowed to terminate its Lifeline service, some low-income customers may be without Lifeline service. The PUCO has a statutory obligation to prevent this from happening. The PUCO should grant the Consumer Advocates' Motion and either hold this case in abeyance or seek public comment to determine the effect of the FCC's proposal on customers receiving Lifeline service in Ohio.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply was served on the persons stated below  
via electronic transmission this 11<sup>th</sup> day of January 2018.

/s/ Terry L. Etter

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