

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Petition of	)	
AT&T Ohio Seeking to Relinquish	)	Case No. 17-1948-TP-UNC
Its Eligible Telecommunications	)	
Carrier Designation in a Portion of	)	
Its Service Territory.	)	

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**APPLICATION FOR REHEARING  
BY  
GREATER EDMONT COMMUNITY COALITION,  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,  
OHIO ASSOCIATION OF COMMUNITY ACTION AGENCIES,  
OHIO POVERTY LAW CENTER, AND  
SOUTHEASTERN OHIO LEGAL SERVICES**

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Lifeline is a telephone assistance program that makes basic local telephone service more affordable for income-eligible families across Ohio.<sup>1</sup> Lifeline helps low-income Ohioans get and maintain telephone service through discounts on monthly bills and installation charges. The Lifeline discounts help make telephone service affordable for thousands of Ohioans. Ohioans are about to lose their Lifeline service through no fault of their own. The PUCO should adopt adequate consumer protections for all these consumers.

In this case, the Public Utilities Commission of Ohio (“PUCO”) authorized AT&T Ohio to stop providing Lifeline service to approximately 7,000 customers and established a process for consumers to search for another Lifeline provider.<sup>2</sup> But consumers generally have little experience with the PUCO’s processes. Hence, the PUCO should

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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> Finding and Order (March 13, 2019) (“Order”).

adopt processes that are consumer-friendly and that protect consumers. The Greater Edgemont Community Coalition, the Office of the Ohio Consumers' Counsel, Ohio Association of Community Action Agencies, Ohio Poverty Law Center, and Southeastern Ohio Legal Services (collectively, "Consumer Groups") acknowledge the PUCO's efforts in this regard.

Nevertheless, some aspects of the PUCO's Order was unjust and unreasonable. The Consumer Groups seek rehearing of the PUCO's Order regarding the following issues:

Assignment of Error No. 1: The PUCO's Order was unlawful, unjust, and unreasonable because it authorized AT&T Ohio to stop providing Lifeline service to consumers based on a PUCO Staff recommendation that relied on suspect data that is the subject of an FCC investigation and thus is not supported by the record of this case, as required by R.C. 4903.09.

Assignment of Error No. 2: The PUCO's Order was unjust and unreasonable because it limited to one year the time that AT&T Ohio will continue to provide the Lifeline discount to a customer who cannot find another Lifeline provider by August 10, 2019, even though the customer might not find another Lifeline provider within that year.

Assignment of Error No. 3: The PUCO's Order was unjust and unreasonable because it did not address situations where an alternative Lifeline provider must acquire or construct facilities in order to serve a current AT&T Ohio Lifeline customer who must change providers and thus some consumers could lose their Lifeline service.

The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

This case involves AT&T Ohio’s petition to stop providing Lifeline service to about 7,000 customers in 118 of its 192 exchanges. AT&T Ohio is willing to serve these consumers “at standard AT&T prices, including all applicable surcharges, fees and taxes.”<sup>3</sup> So it’s simply a matter of AT&T Ohio not wanting to serve low-income customers at discounted rates anymore.

In its Order, the PUCO approved AT&T Ohio’s petition and established a process for AT&T Ohio to stop providing Lifeline service in the affected areas. The PUCO relied on data from the PUCO Staff that 99.85% of the affected area is covered by at least one alternative Lifeline provider.<sup>4</sup> Customers will receive a first notice that AT&T Ohio will no longer provide Lifeline service at least 60 days before the relinquishment date and a second notice at least 15 days before the relinquishment date.<sup>5</sup> The relinquishment date is 90 days after the PUCO’s Order<sup>6</sup> (i.e., June 11, 2019), and customers have an

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<sup>3</sup> Petition (September 7, 2017) at 9.

<sup>4</sup> Order, ¶¶67.

<sup>5</sup> *Id.*, ¶14.

<sup>6</sup> *Id.*, ¶65.

additional 60 days after that (until August 10, 2019) to find an alternative provider, if available.<sup>7</sup> If another Lifeline provider cannot serve the customer's home, AT&T Ohio must continue to provide the Lifeline discount to the customer for one year or until the customer finds another Lifeline carrier, whichever comes first.<sup>8</sup>

Although the PUCO's Order offers more consumer protections than AT&T Ohio's petition, the Order nevertheless is unjust and unreasonable. The PUCO should abrogate or modify the Order as the Consumer Groups recommend below.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." The Consumer Groups filed comments in this case on August 31, 2018 and a response regarding the PUCO Staff's report on March 8, 2019.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such

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<sup>7</sup> *Id.*, ¶68.

<sup>8</sup> *Id.*, ¶¶69, 54.

application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” The statutory standard to modify the Order is met here.

### III. ASSIGNMENTS OF ERROR

**Assignment of Error No. 1: The PUCO’s Order was unlawful, unjust, and unreasonable because it authorized AT&T Ohio to stop providing Lifeline service to consumers based on a PUCO Staff recommendation that relied on suspect data that is the subject of an FCC investigation and thus is not supported by the record of this case, as required by R.C. 4903.09.**

AT&T Ohio’s petition provided insufficient support for allowing AT&T Ohio to stop providing Lifeline service to consumers in all or parts of 118 exchanges.<sup>9</sup> AT&T Ohio’s conclusion that customers have alternatives to its Lifeline service was based on statements by Lifeline carriers in their applications for PUCO authorization that they would provide service in certain areas.<sup>10</sup> But this does not provide certainty that some customers, or even any customers, would have an alternative Lifeline provider available at their homes.

The PUCO Staff conducted a more thorough analysis of the availability of Lifeline providers to AT&T Ohio customers in the areas affected by the petition. Using FCC wireless coverage data, the PUCO Staff determined that 99.85% of the affected area is served by at least one alternative provider.<sup>11</sup> However, as the PUCO Staff recognized,

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<sup>9</sup> See Consumer Groups Comments (August 31, 2018) at 6-8.

<sup>10</sup> *Id.*

<sup>11</sup> See PUCO Staff Report (February 8, 2019) at 9.

the FCC's data is suspect and its reliability is the subject of an FCC investigation.<sup>12</sup> The FCC launched its investigation after the filing of more than 20 million speed tests across 37 states, challenging the coverage maps that were submitted to the FCC.<sup>13</sup> Thus, any reliance on the FCC data is misguided.

Nevertheless, the PUCO relied fully on the suspect data in approving AT&T Ohio's petition. First, the PUCO relied on the suspect data to conclude that 99.85% of the area affected by the petition would have at least one alternative Lifeline provider available.<sup>14</sup> Next, the PUCO relied on the suspect data to conclude that only two of the addresses listed for Lifeline customers in the affected area are outside another Lifeline provider's coverage area.<sup>15</sup> Based on this suspect data, plus the conditional commitment from the alternative Lifeline providers that they would continue to serve the affected area,<sup>16</sup> the PUCO approved the petition.<sup>17</sup>

R.C. 4903.09 requires that the PUCO's orders be based on the record evidence of the case. But the PUCO's approval of the petition in this case is based on unsound data that should not be given the level of reliance that the PUCO gives it. The record does not support the PUCO's conclusion that Lifeline customers have alternative Lifeline service

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<sup>12</sup> See *id.* at 8 and n. 45, citing Federal Communications Commission, "FCC Launches Investigation into Potential Violations of Mobility Fund Phase II Mapping Rules," December 7, 2018.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> Order, ¶67.

<sup>15</sup> *Id.*

<sup>16</sup> In their comments filed in this case, the alternative Lifeline providers stated that they would not continue service if the FCC follows through on its plan to eliminate Lifeline funding for non-facilities-based carriers. See Consumer Groups Comments at 9-11.

<sup>17</sup> Order, ¶67.



available at their homes. The PUCO's Order violates R.C. 4903.09 and is unlawful, unjust, and unreasonable. The PUCO should abrogate its Order.

**Assignment of Error No. 2: The PUCO's Order was unjust and unreasonable because it limited to one year the time that AT&T Ohio will continue to provide the Lifeline discount to a customer who cannot find another Lifeline provider by August 10, 2019, even though the customer might not find another Lifeline provider within that year.**

In allowing AT&T Ohio to stop providing Lifeline service to approximately 7,000 customers, the PUCO adopted a "grace period" for the customers to find a new provider. The "grace period" runs for 60 days after the relinquishment date contained in the Order.<sup>18</sup> The relinquishment date is 90 days after the Order was issued,<sup>19</sup> or June 11, 2019. Thus, customers in the affected area have until 60 days after June 11, 2019 – which is August 10, 2019 – to find a new Lifeline provider. If another Lifeline provider is not available to serve a customer's residence, AT&T Ohio must continue to provide the Lifeline discount to the customer for one year or until the customer finds a new Lifeline provider, whichever comes first.<sup>20</sup> But this additional time for AT&T Ohio to provide the Lifeline discount is not long enough to protect consumers.

The General Assembly recognized this when it enacted the process for telephone companies to withdraw basic local service. In that process, if a customer cannot find another provider of basic service within the time allotted under the petition process the PUCO may order the customer's local telephone company to continue providing basic service to the customer for one year.<sup>21</sup> At the end of that year, the PUCO will re-examine

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<sup>18</sup> *Id.*, ¶68.

<sup>19</sup> *Id.*, ¶65.

<sup>20</sup> *See id.*, ¶¶69, 54.

<sup>21</sup> R.C. 4927.10(B)(2).

the customer's situation and if there is still not another carrier to provide basic service at the customer's residence, the PUCO may order the customer's local telephone company to continue providing basic service to the customer indefinitely.<sup>22</sup>

The PUCO should provide AT&T Ohio's Lifeline customers in the affected area the same protection that the General Assembly provided Ohioans whose local telephone company withdraws basic service. But the PUCO did not. The PUCO's Order is unjust and unreasonable. If the PUCO does not abrogate the Order, it should modify the Order to make it consistent with the consumer protections that exist for consumers whose local telephone company withdraws basic service. The PUCO should require AT&T Ohio to provide the Lifeline discount for more than one year to customers who do not have an alternative Lifeline provider's service at their homes.

**Assignment of Error No. 3: The PUCO's Order was unjust and unreasonable because it did not address situations where an alternative Lifeline provider must acquire or construct facilities in order to serve a current AT&T Ohio Lifeline customer who must change providers and thus some consumers could lose their Lifeline service.**

Under 47 U.S.C. §214(e)(4), when a telephone company is allowed to withdraw Lifeline service the state commission must give a customer's new Lifeline provider up to a year to construct or acquire any facilities needed to serve the customer. The PUCO acknowledged this requirement in federal law,<sup>23</sup> but did not specify that AT&T Ohio must continue to provide the Lifeline discount to such customers during the one-year construction period.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, ¶9.

The Order is unjust and unreasonable without this directive. If the PUCO does not abrogate the Order, it should modify the Order to specify that AT&T Ohio continue to provide the Lifeline discount to customers whose new Lifeline provider must acquire or construct facilities to serve their homes until the new Lifeline provider has acquired or constructed facilities to serve.

#### **IV. CONCLUSION**

Approximately 7,000 Ohioans are about to lose their Lifeline service through no fault of their own. The PUCO should adopt adequate consumer protections for these consumers. The Order allowing AT&T Ohio to stop providing Lifeline service to these consumers is inadequate to protect them. The PUCO should grant Consumer Groups rehearing and abrogate or modify the Order as we recommend.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission this 12<sup>th</sup> day of April 2019.

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Summary: App for Rehearing Application for Rehearing by Greater Edgemont Community Coalition, The Office of the Ohio Consumers' Counsel, Ohio Association of Community Action Agencies, Ohio Poverty Law Center and Southeastern Ohio Legal Services electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.