

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of SBC Ohio for)
Approval of an Alternative Form of Regulation.)

Case No. 02-3069-TP-ALT

ENTRY

The Commission finds:

- (1) On January 6, 2003, the Commission issued a finding and order approving an application filed by SBC Ohio (now known as AT&T Ohio) seeking an alternative form of regulation (also known as elective alternative regulation) pursuant to Chapter 4901:1-4, Ohio Administrative Code (O.A.C.).
- (2) One of the commitments of elective alternative regulation, set forth in Rule 4901:1-4-06(B)(1)(c), O.A.C., is an enhanced lifeline commitment that provides eligible customers with the maximum discount possible in order to make telephone service affordable to the largest number of eligible customers. In order to the balance needs of lifeline customers and ensure that the greatest number of customers remained connected on the network, the Commission prohibited telephone companies from directly marketing vertical services (e.g., caller ID, call return, call forward, three-way calling etc.), other than call waiting, to lifeline eligible customers. However, the Commission permitted lifeline eligible customers to self-certify, for medical and/or safety reasons, the need for such features. Upon receipt of the lifeline eligible customers' self-certification, the telephone company is to provide the requested vertical feature at the tariffed rate.
- (3) On January 12, 2007, AT&T Ohio filed a request for waiver of Rule 4901:1-4-05(B)(1)(c),¹ O.A.C., as applied to the company under its plan of alternative regulation approved in this proceeding. Specifically, AT&T Ohio seeks a waiver of the current rule which restricts the purchase of vertical features by lifeline customers. A waiver is needed, according to the

¹ Although AT&T Ohio seeks a waiver of Rule 4901:1-4-05(B)(1)(c), O.A.C., this rule was renumbered as Rule 4901:1-4-06(B)(1)(c), O.A.C., last year as a result of Case No. 05-1305-TP-ORD (05-1305), *In the Matter of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*, Opinion and Order (March 6, 2006).

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company, as the rule unnecessarily restricts the purchase of vertical features.

AT&T Ohio offers three principal arguments in favor of its waiver request. First, the company submits that the current rule causes considerable customer confusion. Requiring self-certification of program eligibility, self-certification for a health or safety reason of each optional feature and the identification of each optional feature all on one lifeline form is cumbersome at best and causes considerable, unnecessary and avoidable customer confusion according to the company. Second, AT&T Ohio submits that the current rule impairs automatic enrollment. In support of this position, AT&T Ohio avers that in the most recent assessment, nearly 10,000 home energy assistance program (HEAP) participants were not auto-enrolled into the company's lifeline program as a result of having prohibited vertical features on their accounts. Third, AT&T Ohio maintains that the current rule inhibits lifeline customers from receiving the most economical service insofar as discounted packages of services are available that contain more vertical features than simply call waiting and such packages are offered at a price less than a similar collection of services that are not bundled. Thus, according to AT&T Ohio, the lifeline customer is not obtaining the most economical service.

- (4) Since January 18, 2007, the Commission has received approximately 25 letters in support of AT&T Ohio's waiver request from various social service outreach agencies and individuals.
- (5) On January 29, 2007, the Office of the Ohio Consumers' Counsel (OCC) filed a memorandum in opposition to AT&T Ohio's request for waiver. In support of its memorandum in opposition, OCC avers that AT&T Ohio has not shown good cause for a waiver. OCC maintains that any confusion surrounding the lifeline program and auto-enrollment of HEAP customers are issues involving administration of the rule and not the rule itself. In fact, according to OCC, AT&T Ohio could enroll HEAP-eligible customers into the company's lifeline program and then notify those customers that they must provide a certification in order to retain the vertical features and keep the discount or opt out of the program. This is, OCC alleges, the process used by United Telephone Company of

Ohio dba Embarq for automatic enrollment of customers who have features on their accounts. Concerns involving customer confusion could be rectified by revising the form used by AT&T Ohio and/or clearer guidance provided to customers when filling out the form.

A further reason to deny AT&T Ohio's waiver request is, according to OCC, that lifeline customers with vertical services and bundles are at greater risk of disconnection. Additionally, OCC avers that lifeline customers subscribing to bundles that include basic service will lose the protection afforded by the alternative regulation rules which, in effect, keeps the basic service rate for lifeline customers from increasing. Next, OCC claims that AT&T Ohio's marketing history gives little confidence on this issue. As support for this position, OCC points to the high-pressure sales tactics employed by AT&T Ohio's predecessor Ameritech Ohio, that resulted in a Commission ordered investigation and forfeitures as described in detail in Case No. 99-938-TP-COI. Accordingly, OCC recommends denying AT&T Ohio's request for waiver.

If the Commission is inclined to grant any waiver, however, OCC offers an alternative to the company's waiver request. In its alternative, OCC proposes a six or nine month waiver of the medical/safety self-certification requirement but only for Caller ID. Thus, lifeline customers under OCC's proposal could have either Call Waiting or Caller ID or both without the requirement to self-certify a medical or safety need. Additionally, the company should be required to offer a package that includes basic service plus Call Waiting and Caller ID at a discount from the a la carte price for those three offerings. Accompanying this limited waiver, the OCC recommends requiring that AT&T Ohio track and provide data during the trial period regarding disconnection information, arrearage information, enrollment numbers and information on the number of lifeline customers taking packages and vertical services versus those customers only opting for basic service. In any event, OCC asserts that the marketing restriction should remain in place.

- (6) AT&T Ohio filed a reply in support of its waiver request on February 5, 2007. In response to OCC, the company clarifies that it is seeking a waiver of the current restriction regarding

the purchase of vertical features by lifeline customers in order to fully respond to its lifeline customers' stated needs. This would include, AT&T Ohio maintains, a waiver from the prohibition to market vertical features to lifeline customers. The company is not, however, seeking a waiver of the rule that provides only one lifeline discount per household.

Regarding OCC's objections, AT&T Ohio submits that the merits of the waiver, coupled with the lifeline advisory board's vote to support the waiver and the numerous letters of support from outreach and other consumer service agencies demonstrates that OCC is out of touch with the needs of its low-income constituents. AT&T Ohio urges the Commission to approve the request for waiver as originally filed as soon as possible.

- (7) On February 12, 2007, Consumers for Fair Utility Rates, The Neighborhood Environmental Coalition and the Empowerment Center of Greater Cleveland (jointly, Citizens Coalition) filed comments on AT&T Ohio's waiver application and OCC's memorandum in opposition. Although filed out-of-time to be considered reply comments to OCC's memorandum contra, we will briefly summarize the positions expressed by the Citizens Coalition. The Citizens Coalition is generally in favor of the Commission granting AT&T Ohio's waiver, but these groups do have various concerns. A number of these concerns have been raised in the OCC's memorandum contra. While acknowledging the OCC's concerns and the importance of those concerns, the Citizens Coalition still favors granting the waiver. On balance, the Citizens Coalition maintains that granting the waiver will greatly expand the number of eligible families automatically enrolled in lifeline assistance. Thus, the Citizens Coalition urges the Commission to take prompt action to approve AT&T Ohio's waiver request in this matter.

Comments in opposition to OCC's memorandum contra AT&T Ohio's application for waiver were also filed on behalf of Parkview Areawide Seniors, Inc. (Parkview), a member of the Lifeline Advisory Board, on February 21, 2007. In its comments, Parkview notes that the Lifeline Advisory Board, in a split vote on January 29, 2007, agreed to support AT&T Ohio's lifeline waiver.

- (8) The Commission is torn on this issue. The main argument of AT&T Ohio and the consumer service agencies in support of this waiver is that low-income customers should be treated no differently than other residential customers. The fact of the matter is, however, that lifeline customers are treated differently than other residential customers in that they receive assistance from the government to pay their telephone bills. The reason they receive government assistance is to further the very important public policy of universal service. The Commission's overall interest with lifeline telephone service has always been to connect more customers to the telephone network, and more importantly, to keep those lifeline customers connected to the telephone network at affordable rates.
- (9) The Commission remains concerned that permitting unlimited, direct marketing to this most vulnerable group of customers, as AT&T Ohio requests, will result in more lifeline customers buying more expensive packages that provide a lot of extra unneeded and unwanted features. This, in turn, could make these customers even more susceptible to disconnection for nonpayment, which is already a significant cause of lifeline customers dropping off the network. Moreover, we note that, in comments filed at the Commission less than a year ago in the alternative regulation case, AARP argued persuasively that the purpose of maximizing the number of Ohio citizens that are connected to the telephone network would be defeated if basic local exchange service (BLES) rates for lifeline customers were allowed to increase. OCC and other consumer groups shared AARP's concern in that case, urging the Commission to protect the affordability of basic telephone service for lifeline customers. The Commission, agreeing that affordable access to the telephone network for lifeline customers is an important public policy goal, froze BLES rates for lifeline customers. If we were to allow AT&T Ohio unbridled freedom in marketing features and packages combined with BLES to lifeline customers, lifeline customers could lose this pricing protection, since packages are priced at market-based rates and can be increased at the company's discretion on 15 day's notice to customers. Based on these concerns, we continue to believe it would be unwise to permit unlimited subscription to optional services at either the lifeline customer's request or upon direct solicitation by AT&T Ohio customer service representatives.

On the other hand, we find somewhat compelling the support from the AT&T Ohio Lifeline Advisory Board and the significant number of outreach and social service agencies who voiced their views in support of this waiver. We take note, in the letters of support, of the many instances cited in which lifeline customers could benefit from features, such as caller ID and three-way calling, and discounted packages including these features. The Commission also recognizes that packages of services have become common in the industry, and some packages could provide a cost savings to lifeline customers who need these features. We also understand that some customers might find confusing and intimidating the requirement to self-certify that optional features meet a medical or safety need, thus, resulting in otherwise eligible customers possibly forgoing lifeline assistance. Finally, the Commission acknowledges that less restrictive rules on subscription to optional features could result in more customers being enrolled automatically into lifeline.

- (10) Thus, in balancing all of the aforementioned concerns, the Commission finds reason to grant a limited waiver, similar to that proposed by OCC, for a trial period until the Commission rules otherwise. During this trial period, lifeline customers would be permitted to purchase caller ID, three-way calling and call waiting from AT&T Ohio without having to certify that these optional services are necessary for medical or safety reasons. Additionally, AT&T Ohio would be permitted to offer lifeline customers who indicated a desire for any of these three features, its "Select Feature Package" (found in P.U.C.O. Tariff No. 20), without a self-certification, as long as that package continues to be priced at a bundled rate which is lower than the sum of the price of BLES plus the Caller ID, three-way calling and call-waiting features purchased individually. In all other respects, our current lifeline requirements would remain in effect. Lifeline customers would still be required to self-certify a need to purchase other optional features, and AT&T Ohio would still be prohibited from directly marketing other optional features or packages to lifeline customers. AT&T Ohio must file a letter in this docket within 30 days of this entry advising whether the company is going to operate pursuant to this limited waiver on a trial basis. Should AT&T Ohio fail to file a letter within 30 days of today's entry, this alternative,

limited waiver authority will expire without further Commission action.

- (11) If AT&T Ohio chooses to accept this limited waiver, during the trial period, the Commission intends to monitor closely AT&T Ohio's lifeline statistics to ensure that, on balance, lifeline customers' benefit from granting this waiver. We, therefore, direct AT&T Ohio to continue collecting the data the company already collects and reports to the AT&T Ohio Lifeline Advisory Board. In addition, we direct AT&T Ohio to collect data regarding (a) disconnection information for lifeline customers with BLES only compared to that for lifeline customers taking optional features, including the reasons for the disconnections tracked by category; (b) arrearage information for lifeline customers with BLES only compared to that for lifeline customers taking optional features; (c) the number of lifeline customers availing themselves of optional features versus the number of lifeline customers opting for BLES only; (d) the average bill for lifeline customers availing themselves of optional features who are disconnected; (e) the average number of vertical services and/or packages for lifeline customers availing themselves of optional features who are disconnected; and (f) lifeline enrollment data to gauge the growth of enrollment. The Company is also directed to provide monthly information regarding, the price of its "Select Feature Package" as well as the stand-alone prices for BLES, Caller ID, three-way calling and call-waiting. We direct our staff to meet with AT&T Ohio to work out the data specifics and format. AT&T Ohio is instructed to collect and provide such data on a monthly basis to the Commission staff and the AT&T Ohio Lifeline Advisory Board. The Commission will review this data in the future, and determine the appropriateness of terminating or extending the waiver indefinitely.
- (12) Lastly, the Commission determines that, pursuant to Rule 4901:1-4-06(B)(8), O.A.C., the role of the Lifeline Advisory Board is to coordinate lifeline program activities. Commission staff works with the Lifeline Advisory Board to reach consensus, however, where consensus is not possible, the Commission's staff shall make the final determination. All advisory board decisions on how the lifeline program is

implemented and the lifeline promotional plan are subject to Commission review.

It is, therefore,

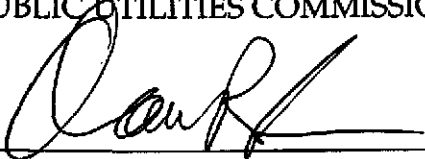
ORDERED, That AT&T Ohio's request for waiver is denied as discussed herein. It is, further,

ORDERED, That AT&T Ohio is granted a more limited waiver in accordance with finding 10. It is, further,

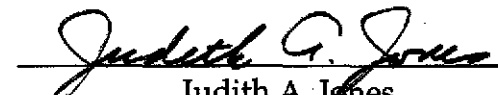
ORDERED, That AT&T Ohio collect and report such data on a monthly basis to Commission staff and AT&T Ohio's Lifeline Advisory Board as set forth in finding 11. It is, further,

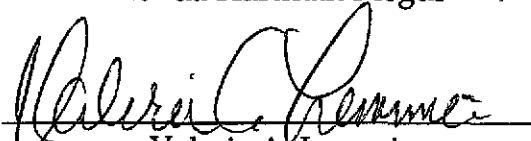
ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

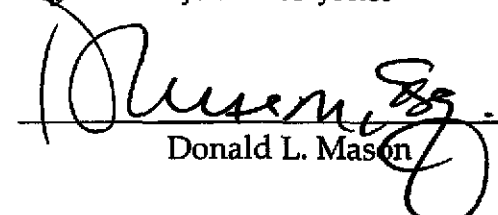
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus


Judith A. Jones

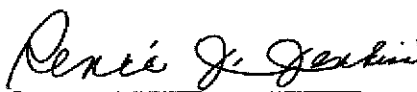

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Entered in the Journal

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Renee J. Jenkins
Secretary

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Case No. 02-3069-TP-ALT

CONCURRING OPINION OF COMMISSIONER VALERIE A. LEMMIE

I concur with the Commission's approval of the limited waiver that would permit lifeline customers to purchase caller ID and three-way calling in addition to call waiting without the need to self-certify a medical or safety reason for these optional services. Additionally, this limited waiver allows AT&T Ohio to offer lifeline customers who indicate a desire for any of these three features, the "Select Feature Package," without a self-certification, as long as that package continues to be priced at a bundled rate which is lower than the sum of the price of basic local exchange service plus the caller ID, three-way calling, and call waiting features purchased individually.

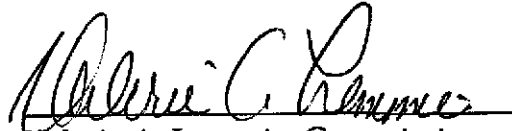
AT&T Ohio initially requested a waiver that would allow it to offer lifeline customers its full range of services and packages upon establishing lifeline service. I believe that granting a full waiver could potentially lead to lifeline customers signing up for more services than they might need and/or could afford. These same customers might find themselves in disconnect status or completely off the network because they could not afford the optional services. Under existing rules, lifeline customers could self-certify a need for and receive optional services upon signing a consent form, thus not limiting the optional services that lifeline customers have access to.

The limited waiver, as approved by the Commission today, allows lifeline customers easy access to the three most popular (or most requested) optional services, i.e., call waiting, caller ID, and three-way calling. The "Select Feature Package" combines all three optional services with basic local exchange service at a discounted rate of about \$28 per month. So, lifeline customers will have access to the optional services that fulfill their most basic needs, while enjoying the discount that the package deal offers.

In considering this request, I looked at the opinions and concerns expressed by consumer interest groups as well as the Ohio Consumers' Counsel, and I am confident that this finding and order will address those concerns.

AT&T Ohio will provide to the Commission, on a monthly basis, data showing lifeline customers who opted for the optional services approved through this waiver and lifeline customers who opted for basic local exchange service only. The disconnection, arrearage information, and enrollment numbers reported monthly should help the

Commission make a more informed decision in the future to determine if this limited waiver was successful, if a full waiver is warranted, or if other action is necessary.


Valerie A. Lemmie, Commissioner