

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**AT&T OHIO’S MEMORANDUM CONTRA TO MOTION TO HOLD CASE IN
ABEYANCE OR, IN THE ALTERNATIVE, ESTABLISH A BRIEFING SCHEDULE**

The Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T Ohio”) respectfully submits this Memorandum Contra to the Motion to Hold This Case in Abeyance or, In the Alternative, to Establish a Procedural Schedule (“Motion”), filed by The Office of the Ohio Consumers’ Counsel and Greater Edgemont Community Coalition (“OCC/Edgemont”). OCC/Edgemont ask the Commission to hold AT&T Ohio’s Petition to relinquish its designation as an Eligible Telecommunications Carrier (“ETC”) in abeyance for an unknown period based on a recent FCC proposal in a notice of proposed rulemaking, or else to allow briefing on that FCC proposal.

The Commission should deny the Motion. AT&T Ohio’s Petition shows that it meets the federal standard in all areas for which AT&T Ohio is relinquishing its ETC designation. There has been no change in law or fact. By law, AT&T Ohio is entitled to relinquish its ETC designation wherever there is at least one other ETC present. AT&T Ohio’s evidence shows there are at least four, and in many instances eleven, other ETCs available in the relinquishment area. Ohio consumers strongly prefer those other ETCs for their Lifeline service: from 2008 through 2016 AT&T Ohio lost 94% of its Lifeline subscribers, so that by the end of 2016 it served only about 2% of Ohio’s Lifeline subscribers. If after relinquishment AT&T Ohio 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.*

More to the point, the FCC's proposal rule on which the Motion depends is, at this point, nothing more than a proposal. There is no telling whether, or when, it might ever be adopted, or in what form. AT&T Ohio's relinquishment Petition, by contrast, is ripe for decision today based on the current law and undisputed facts. The Commission should grant the requested relief without delay, as twelve of the twenty-one states where AT&T operates as an ILEC have already done.¹

¹ Order of the Commission, *In the Matter of the Petition of Indiana Bell Tel. Co. Inc. d/b/a AT&T Indiana for Partial Relinquishment of Its Designation as an Eligible Telecommunications Carrier in Indiana*, Cause No. 41502 ETC 39 S1 (Ind. Util. Reg. Comm'n, Nov. 21, 2017) ("*Indiana Relinquishment Order*"); Order No. S-34632, *In re: Petition of AT&T Louisiana for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas*, Docket No. S-34632 (La. Pub. Serv. Comm'n, Nov. 3, 2017) ("*Louisiana Relinquishment Order*"); Order Approving Partial Relinquishment of ETC Designation, *In Re: Application of BellSouth Telecommunications, Inc. d/b/a AT&T Georgia for Designation as an Eligible Telecommunications Carrier*, Docket No. 8529 (adopted by Georgia P.S.C. September 6, 2017) ("*Georgia Relinquishment Order*"); Consummating Order, Order No. PSC-2017-0329-CO-TP, *In re Request for relinquishment of partial eligible telecommunications carrier status, by BellSouth Telecommunications, LLC d/b/a AT&T Florida*, Docket No. 20170082-TP, (F.P.S.C August 16, 2017) ("*Florida Relinquishment Order*"); Commission Order, *Petition of BellSouth Telecommunications, LLC d/b/a AT&T South Carolina for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas*, Docket No. 2017-109-C (S.C. P.S.C. May 3, 2017) ("*South Carolina Relinquishment Order*"); Order Confirming AT&T Mississippi's Relinquishment of its Eligible Telecommunications Carrier Designation in Specified Areas, *In re Verified Petition of AT&T Mississippi for an Order Confirming Relinquishment of its Eligible Telecommunications Carrier Designation in Specified Areas*, Docket No. 2016-UA-213 (Miss. P.S.C. Apr. 13, 2017) ("*Mississippi Relinquishment Order*"); Order Confirming AT&T Tennessee's Relinquishment of Its Eligible Telecommunications Carrier Designation in Specified Areas, *In re Verified Petition of AT&T Tennessee for an Order Confirming Relinquishment of its Eligible Telecommunications Carrier Designation in Specified Areas*, Docket No. 16-00123, at 4 (Tenn. Reg. Auth. Mar. 24, 2017) ("*Tennessee Relinquishment Order*"); Final Decision, *Request by Wisconsin Bell, Inc. d/b/a AT&T Wisconsin, to Relinquish its Status as an Eligible Telecommunication Carriers in Certain Parts of its Service Territory*, Docket No. 6720-TI-225 (Wis. P.S.C. March 13, 2017) ("*Wisconsin Relinquishment Order*"); Order, *In re Implementation of the Universal Service Requirements of Section 254 of the Telecommunications Act of 1996*, Docket No. 25980 (Ala. P.S.C. March 9, 2017) ("*Alabama Relinquishment Order*"); Final Order Granting Relinquishment of ETC Designation, *Application of Southwestern Bell Tel. Co. for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation*, Order No. 66136, Cause No. PUD 201600455 (Okla. Corp. Comm'n, Feb. 22, 2017) ("*Oklahoma Relinquishment Order*"); *In the Matter of Southwestern Bell Telephone Company, d/b/a AT&T Missouri's Notice of Relinquishment of its Eligible Telecommunications Carrier Designation Pursuant to 47 U.S.C. § 214(e)(4) and Notice of Withdrawal From State Lifeline and Disabled Programs*, File No. IO-2017-0132 (Mo. P.S.C., Jan. 11, 2017) ("*Missouri Relinquishment Order*").

ARGUMENT

I. AT&T Ohio Meets the Federal Standard to Relinquish Its ETC Designation, and AT&T Ohio's Customers in the Relinquishment Area Will Continue to Have Access to Multiple Providers.

Federal law establishes the standard that state commissions must apply when a carrier seeks to relinquish its designation as an ETC. That standard is objective and straightforward. Under 47 U.S.C. § 214(e)(4), a state commission “shall permit” an ETC to relinquish its ETC designation for “any area” that is “served by” at least one other ETC. 47 U.S.C. § 214(e)(4); 47 C.F.R. § 54.205(a). Section 214(e)(4) does not distinguish between specific types of ETCs (*e.g.*, facilities-based or resale) and requires only that at least one other ETC will remain available to serve the relinquishing carrier's customers. AT&T Ohio's Petition shows that AT&T Ohio meets the standard for relinquishment in the areas at issue here, all of which are served by four to eleven ETCs other than AT&T Ohio. Petition, ¶¶ 4, 23, and Ex. C. OCC/Edgemont do not dispute that there is at least one other ETC in all of the exchanges in which AT&T Ohio seeks to relinquishment.

Given that AT&T Ohio meets the relinquishment standard under Section 214(e)(4), OCC/Edgemont attempt to misdirect the Commission's attention to later language in Section 214(e)(4) that directs state commissions to ensure that customers of the relinquishing carrier will continue to have telephone service available. Mem. in Support at 2. That is not a concern here.

The presence of multiple other ETCs in the relinquishment area ensures that AT&T Ohio's consumers in the affected areas will continue to have options for voice service after AT&T Ohio's relinquishment. Those ETCs easily absorbed 94% of AT&T's Lifeline subscribers from 2008 to 2016, and likely would have no difficulty taking on AT&T Ohio's small remaining Lifeline base. Petition, ¶ 12. Moreover, customers can stay with AT&T Ohio if they so choose. AT&T Ohio is not discontinuing its own legacy wireline voice services as a

result of the Petition. *Id.*, ¶ 3. Rather, AT&T Ohio will continue to offer legacy voice service to all consumers throughout the relinquishment area, and any non-Lifeline customer that receives legacy voice service from AT&T Ohio today will see no change in his or her voice service after relinquishment. *Id.*, ¶ 17. As other state commissions have expressly found (and the rest have implicitly recognized), AT&T Ohio’s relinquishment does not raise any concerns about continuation of service.²

In fact, AT&T Ohio cannot be relieved of its common carrier voice obligations without first petitioning for and receiving permission from the FCC to discontinue legacy voice service under 47 U.S.C. § 214(a). To receive permission to discontinue legacy voice service, AT&T Ohio would have to demonstrate to the FCC that “neither the present nor future public convenience and necessity will be adversely affected” by discontinuing service. 47 U.S.C. § 214(a).³ The FCC also is expressly authorized to impose conditions on the approval of any discontinuance request that “in its judgment the public convenience and necessity require.” 47 U.S.C. § 214(c). All of the ETCs other than AT&T Ohio likewise would have to meet these same requirements before discontinuing their legacy voice service.

Moreover, Ohio law establishes a review process that governs the withdrawal of residential basic local exchange service (“BLES”) by an incumbent local exchange carrier such

² See, e.g., *Mississippi Relinquishment Order* at 4 (“[T]he requirements related to continuation of service and adequate notice are not applicable in this matter because AT&T will not discontinue any service as a result of the Commission confirming partial relinquishment of the Company’s ETC status.”); *Tennessee Relinquishment Order* (“AT&T will not cease providing universal service in the specified relinquishment area and therefore, additional requirements on remaining ETCs are not applicable.”). These explicit findings are implicit in the orders of the other ten state commissions that have granted AT&T’s relinquishment petitions to date.

³ To determine whether a proposed discontinuance would adversely affect the public interest, the FCC employs a five-factor balancing test that analyzes: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) increased charges for alternative services; and (5) the existence, availability, and adequacy of alternatives. *Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, Memorandum Opinion and Order, 8 FCC Rcd. 2589, 2600, ¶ 54 (1993), *remanded on other grounds*, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

as AT&T Ohio. Under O.R.C. 4927.10, the Commission has the ability to protect residential BLES customers that would be “unable to obtain reasonable and comparatively priced voice service” in the event of such withdrawal. But none of these protections are relevant here because, again, AT&T Ohio is not withdrawing any service and all BLES customers that obtain service today with a Lifeline discount will be able to obtain the same BLES service after relinquishment – albeit without the Lifeline discount.

In short, Ohio consumers have shown a marked preference for obtaining their Lifeline discount (and voice service in general) from providers other than AT&T Ohio. AT&T Ohio’s Lifeline subscribership fell by 94% between 2008 and 2016, even as overall Lifeline subscribership grew by 83%,⁴ so that by year-end 2016 AT&T Ohio served just 2.1% of Lifeline subscribers in Ohio. Petition, ¶ 12. Consumers have shown they are more than able to obtain voice service, including Lifeline discounts, from carriers other than AT&T Ohio, and those carriers have demonstrated they have adequate capacity to meet demand.

II. The FCC’s NPRM Provides No Basis for Staying This Proceeding.

AT&T Ohio filed its Petition on September 7, 2017. That Petition satisfied Section 214(e)(4) when filed and continues to satisfy it today. OCC/Edgemont nevertheless ask for an open-ended abatement of this proceeding in light of a recent FCC notice of proposed rulemaking (NPRM),⁵ putting this case on hold until the FCC rulemaking is complete. Motion at 1-2. The Commission should deny that request.

⁴ In the Dayton 22 wire center, where the Edgemont Community Coalition is located, AT&T Ohio’s Lifeline subscribership fell approximately 25% between January, 2016 and December, 2016. As a result of these steep declines in Lifeline subscribership, there were just 70 AT&T Ohio Lifeline subscribers in the Dayton 22 wire center at the end of 2016. These 70 AT&T Ohio Lifeline subscribers can obtain alternative services from 11 other providers of Lifeline services.

⁵ *Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017) (“FCC NPRM”).

OCC/Edgemont focus on a single proposal in the FCC's NPRM, namely the FCC's proposal to limit Lifeline support to broadband service provided over facilities-based broadband networks that also support voice service. *Id.*, citing FCC NPRM, ¶¶ 67-73. The FCC's proposal, however, is just that – a mere proposal. The FCC asked an array of questions regarding that proposal (including what “facilities-based” would mean in the context of the proposed rule, what mix of facilities-based and resale service would still qualify for funding, and what kind of transition period would be needed if the proposal were adopted). FCC NPRM, ¶¶ 68-73. There is no telling whether the FCC will adopt its proposal, or what modifications it might make, or what kind of transition period or process it might adopt, or what it might say about the effect of any new rule on ETC relinquishment requests. And just as importantly, there is no telling *when* the FCC might act on its proposal. FCC rulemakings can take years. There is no basis for making AT&T Ohio potentially wait years for a ruling on its Petition based on the mere possibility of a future rule change.⁶ Such a delay would be tantamount to a denial, even though OCC/Edgemont do not claim there is any basis for denying the Petition under current law.

Furthermore, OCC/Edgemont's fears about customers being left without an ETC option overlook the NPRM's indication that if the FCC were to adopt a new rule it would also consider the impact of the rule on Lifeline subscribers and establish a transition period to protect consumers. FCC NPRM, ¶¶ 70-71. In addition, should any situation arise in the future where no common carrier is willing to provide Lifeline-discounted service to a given area, 47 U.S.C. § 214(e)(3) provides the FCC and state commissions authority to address the situation at that time.⁷

⁶ It is worth nothing that the FCC has had a number of rulemakings or other proceedings in recent years that affect ETCs. Some of those decisions are what prompted AT&T Ohio's Petition. Petition, ¶¶ 8-10. Yet the Commission has granted at least seven ETC relinquishment requests from 2015 to 2017 without delaying those proceedings to wait for whatever the FCC might be considering next. *Id.*, ¶ 18 n.17.

⁷ Section 214(e)(3) states as follows:

III. Briefing on the FCC's NPRM Is Unnecessary and Should Not Be Used to Delay This Proceeding.

In the alternative, OCC/Edgemont ask the Commission to allow two rounds of briefing on the proposal in the FCC's NPRM, with 30 days allowed for each round. Motion at 2; Mem. in Support at 3. The Commission should deny that request as well.

AT&T Ohio's Petition has already been pending for four months. A delay in the proceeding to brief the hypothetical impact of a rule that the FCC might (or might not) adopt at some unknown point in the future would serve no purpose, because all such comments would be speculative. If OCC/Edgemont want to comment on the FCC's proposal they can file comments with the FCC, but nothing they can say here would have any effect on whether AT&T Ohio's Petition satisfies current law. Not a single one of the twelve states approving AT&T's relinquishment requests to date have needed to schedule multiple rounds of comments or hearings.

CONCLUSION

For the reasons stated, the Commission should deny OCC/Edgemont's Motion, continue with the proceeding, and grant the relief requested in the Petition.

Designation of eligible telecommunications carrier or unserved areas.-- If no common carrier will provide the services that are supported by Federal universal service support mechanisms under Section 254(c) to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. 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.

Dated: January 4, 2018

Respectfully Submitted,

AT&T Ohio

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this 4th day of January 2018

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Summary: Memorandum AT&T Ohio's Memorandum Contra To Motion To Hold Case In Abeyance Or, In The Alternative, Establish A Briefing Schedule electronically filed by Mr. Mark R Ortlieb on behalf of AT&T Entities and AT&T Ohio and Ohio Bell Telephone Company