

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**AT&T OHIO’S REPLY TO COMMENTS FILED BY
GREATER EDMONT COMMUNITY COALITION, ET AL. AND AARP**

The Ohio Bell Telephone Company (“AT&T Ohio”) respectfully submits this reply to the August 31, 2018 Comments of the Greater Edgemont Community Coalition, *et al.*

(“Edgemont/OCC”)¹ and AARP regarding AT&T Ohio’s pending Petition to relinquish its designation as an Eligible Telecommunications Carrier (“ETC”) in specified areas. The Edgemont/OCC Comments and AARP Comments do not in any way undermine AT&T Ohio’s legal right to relinquish its ETC designation. AT&T Ohio requests that the Commission promptly grant its Petition.

ARGUMENT

I. AT&T OHIO SATISFIES THE LEGAL TEST FOR RELINQUISHMENT

A. Each Exchange Being Relinquished is Served by 4 to 11 Other ETCs

The only thing a carrier must show in order to relinquish its ETC designation is that the relinquishment area is served by another ETC. 47 U.S.C. § 214(e)(4). AT&T Ohio’s Petition meets that standard, as there are from 4 to 11 other ETCs available to provide Lifeline voice discounts in each exchange where AT&T Ohio is relinquishing. Petition, ¶ 23.

AT&T Ohio’s showing is based on each carrier’s application to be designated as an ETC and the obligations that arise once that status is granted. *Id.* Specifically, for each ETC, AT&T

¹ Greater Edgemont Community Coalition, Ohio Association of Community Action Agencies, Ohio Poverty Law Center, Southeastern Ohio Legal Services, and The Office of the Ohio Consumers’ Counsel.

Ohio reviewed the carrier's Application to be designated as an ETC in Ohio, which specified the wire centers for which the carrier was seeking designation as an ETC. The Commission granted an ETC designation for those wire centers, thus obligating each carrier to serve as an ETC in the designated wire centers. Based on those applications and rulings, AT&T Ohio found that there are 4 to 11 other ETCs in every exchange at issue here. That should be the end of the matter.

Edgemont/OCC nevertheless argue that the Commission should significantly increase AT&T Ohio's burden under Section 214(e)(4). They first contend that Exhibit C to AT&T Ohio's Petition "does not guarantee that any of the [ETCs] actually serve any of the exchanges listed in the exhibit." Edgemont/OCC Comments at 6. Yet their only explanation for that claim is that some ETCs' business plans may have changed since becoming ETCs. *Id.* That theory does not hold up. If an Ohio ETC wants to reduce the area where it is designated as an ETC, and thus no longer "serve" that area as an ETC, Ohio law requires it to notify the Commission.² To AT&T Ohio's knowledge, none of the ETCs on which AT&T Ohio relies has done that. To the contrary, the July 2018 filings by those ETCs in this docket confirm that they remain ready to serve new Lifeline customers throughout their designated ETC areas. *See infra*, pp. 6-8.

Edgemont/OCC also argue that AT&T Ohio should be required to provide more proof that other ETCs serve each exchange being relinquished, such as proof that the ETCs have ported telephone numbers to each exchange. Edgemont/OCC Comments at 7-8. Section 214(e)(4), however, requires only that at least one other ETC "serves" the relinquishment area. "Serve," in

² When a carrier is granted ETC status, the Commission typically includes a requirement like the following to require the carrier to notify the Commission of any changes to the carrier's Lifeline service offering:

To the extent that Stand Up Wireless amends the existing rates, terms, and conditions of its Lifeline service offering, it must notify the Commission by filing such modifications in this docket. The company is directed to provide all records and documents requested by the Staff for the purpose of monitoring the company's provision of Lifeline service and compliance with the terms and conditions of this Order. Order, Case No. 12-2253-TP-UNC, at ¶ 13 (PUCO, May 15, 2013). This language would require an ETC to notify the Commission if it were shrinking the area where it offers Lifeline-discounted service, since that would be a change in the terms or conditions of the service.

this context, logically means that the ETC holds itself out as ready to provide service in an area upon request.³ It does not mean that an ETC must actually have customers in each exchange today, which is what ported numbers would be used to show. That explains why none of the other 15 states that have allowed AT&T ILECs to relinquish their ETC status required such evidence, nor has the Commission required such proof from other relinquishing ETCs.

Furthermore, common sense shows that other ETCs serve customers throughout AT&T Ohio's service territory, including the relinquishment area. AT&T Ohio's Petition showed that it lost 94% of its Lifeline subscribers between 2008 and the end of 2016 and served just 2.1% of all Ohio Lifeline subscribers. Petition, ¶¶ 12, 23. Those Lifeline subscribers must be going somewhere, presumably to other ETCs, because total Lifeline subscribership in Ohio grew 83% during that same period (2008 to 2016). *Id.*, ¶ 12. And the trend has continued, as AT&T Ohio lost 13% of its remaining Lifeline subscribers in 2017, then another 16% between the end of 2017 and July 1, 2018.⁴ It has now lost 96% of its Lifeline subscribers since 2008. There are 403,711 lifeline subscribers in Ohio⁵ and the vast majority are getting Lifeline discounts from carriers other than AT&T Ohio. These facts demonstrate consumers' clear preference for Lifeline providers other than AT&T Ohio and that those carriers are serving the former AT&T Ohio Lifeline subscribers.

B. AT&T Ohio's Customers in the Relinquishment Area Will Continue to Be Served

Section 214(e)(4) also states that, before authorizing ETC relinquishment, a state commission must ensure that customers in the relinquishment area "will continue to be served."

³ For example, a "service area" is where a carrier offers service, not where it necessarily has actual customers in every exchange.

⁴ AT&T Ohio's Supplemental Filing – Lifeline Subscriber Count (Aug. 23, 2018).

⁵ As of June 30, 2018.

Edgemont/OCC contend that this means AT&T Ohio should have to make a customer-by-customer showing that the remaining ETCs will be able to serve each AT&T Ohio Lifeline customer. Edgemont/OCC Comments at 13-17. But that is unnecessary, because the undisputed facts already show that AT&T Ohio customers in the relinquishment area will continue to have many options for voice service after relinquishment.

First, the manifest intent of the second sentence of Section 214(e)(4) is to ensure that the relinquishing ETC's customers "will continue to be served." That language contemplates a situation where the relinquishing ETC is discontinuing service altogether so that steps must be taken to ensure that customers will continue to have access to telephone service. But that is not a concern here because AT&T Ohio will continue to provide legacy voice service to non-Lifeline customers throughout the relinquishment area. Petition, ¶¶ 2-3. That fact alone ensures that no customers will lose voice service as a result of relinquishment. Thus, Edgemont/OCC's focus on the remaining ETCs alone is too narrow, as other state commissions have recognized:

Mississippi: "[T]he requirements [in Section 214(e)(4) 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."⁶

Tennessee: "AT&T will not cease providing universal service in the specified relinquishment area and therefore, additional requirements on remaining ETCs [under Section 214(e)(4)] are not applicable."⁷

Texas: "Because AT&T Texas will not cease providing service to its customers but is only relinquishing its ETCs and ETP designations in the areas included in Attachments 1

⁶ See, e.g., 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) at 4.

⁷ 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).

and 2 to this Notice, there is no need for the remaining ETCs or ETPs to purchase or construct adequate facilities [pursuant to Section 214(e)(4)].”⁸

There could be no better assurance of continued service than the fact that AT&T Ohio itself will continue to provide the same legacy voice service that it provides today. Moreover, there are regulatory safeguards in place if, at some point in the future, AT&T Ohio were to seek to stop providing legacy voice service. Specifically, there are federal discontinuance requirements under 47 U.S.C. § 214(a), and state requirements for the withdrawal of residential basic local exchange service (“BLES”) under O.R.C. 4927.10.

Second, there is no doubt that the 4 to 11 other ETCs in each exchange can absorb any former AT&T Ohio Lifeline customers and continue to provide them with Lifeline-discounted voice service, because they have been doing so for a long time already. Other ETCs already have absorbed 96 of every 100 former AT&T Ohio Lifeline subscribers, and they have the ability and capacity to absorb the few remaining AT&T Ohio Lifeline subscribers in the relinquishment area, as the ETCs themselves have confirmed.⁹ Specifically, in response to the Commission’s June 28, 2018 Order, the other 11 ETCs in the relinquishment confirmed that they are ready, willing, and able to serve any non-Lifeline customers that choose to leave AT&T Ohio, as the following table shows:

⁸ Notice of Approval, *Petition of AT&T Texas to Relinquish Its Eligible Telecommunications Carrier Designation in Specified Areas and Notice of Termination of Eligible Telecommunications Provider Designation* (Tex. P.U.C., Jan. 12, 2018) at 3. These explicit findings are implicit in the orders of the other eleven state commissions that have granted AT&T’s relinquishment petitions to date.

⁹ As of June 30, 2018, 93% of AT&T Lifeline subscribers in the relinquishment area reside in areas classified as urban by the Census Bureau, where one would expect to see multiple Lifeline providers. In fact, 91% of AT&T Ohio Lifeline subscribers in the relinquishment area have access to 11 other ETCs, 93% have access to at least 10 other ETCs, and more than 99% have access to at least 5 other ETCs. Only 3 AT&T Ohio Lifeline subscribers have access to just 4 other ETCs, which is still far more than the law requires.

ETC AUTHORIZED TO SERVE IN RELINQUISHMENT AREA	ETC'S STATEMENT IN JULY 2018 COMMENTS
Air Voice Wireless, LLC	“In summary, Air Voice intends to continue to offer Lifeline service to qualifying subscribers throughout its service territory in Ohio ...” “... Air Voice stands ready to offer its wireless Lifeline service options to eligible Lifeline subscribers in Ohio ...” (at 2, 3).
American Broadband & Telecommunications	“It is American Broadband & Telecommunications intent to continue to make available its wireless Lifeline service with the federal discount to its current subscribers and all qualifying applicants that it is able to serve.” “... American Broadband & Telecommunications intends to continue to offer Lifeline service to qualifying subscribers throughout its service territory in Ohio ...” (at 1, 2).
Boomerang Wireless, LLC	“... Boomerang is willing and able to serve all eligible customers with the federal lifeline discount. Boomerang stands ready to offer its wireless Lifeline service options as a Reseller to eligible Lifeline subscribers in Ohio ...” (at 3).
Global Connection Inc. of America d/b/a Stand Up Wireless	“... Global Connection intends to continue to offer Lifeline service to qualifying subscribers throughout its service territory in Ohio ... [and] stands ready to offer its wireless Lifeline service options to eligible Lifeline subscribers in Ohio ...” (at 2, 3)
i-wireless, LLC	“... i-wireless intends to continue to offer Lifeline service to qualifying subscribers throughout its service territory in Ohio ... [and] stands ready to offer its wireless Lifeline service options to all eligible Lifeline subscribers in Ohio ...” (at 2, 3).
Telrite Corporation d/b/a Life Wireless	“It is Telrite’s intent to continue to make available its Lifeline service with the federal discount to its current subscribers and all qualifying applicants that it is able to serve.” “... Telrite currently intends to continue to offer Lifeline service to qualifying subscribers throughout its service territory in Ohio ...” (at 1, 2).
Tempo Telecom, LLC	“Tempo intends to continue providing wireless Lifeline service within its designated service area in the State of Ohio, and Tempo affirms that it is willing and able to provide such Lifeline service to former AT&T Ohio customers should they choose to apply for wireless Lifeline service with Tempo and are found to be eligible to receive wireless Lifeline service from Tempo.” (at 1).

ETC AUTHORIZED TO SERVE IN RELINQUISHMENT AREA	ETC'S STATEMENT IN JULY 2018 COMMENTS
Tracfone Wireless, Inc.	"Tracfone is willing and able to ensure that all customers currently served by AT&T Ohio in the Tracfone service areas will continue to receive the federal Lifeline discount if the customer is eligible and elects to apply for Lifeline discounted service with Tracfone." (at ¶ 1).
Sage Telecom Communications, LLC d/b/a TruConnect	"... TruConnect intends to continue to offer Lifeline service to qualifying subscribers throughout its service territory in Ohio ... and TruConnect stands ready to offer its wireless Lifeline service options to eligible Lifeline subscribers in Ohio ..." (at 2, 3).
Q Link Wireless, LLC	"Q Link is willing to expand its provision of Lifeline service to additional low-income Ohioans that live in areas covered by Q Link, including those currently served by AT&T Ohio." (at 3).
Virgin Mobile USA L.P. d/b/a Assurance Wireless	"... Virgin Mobile confirms that it stands ready to serve any customers within its designated service area, consistent with the requirements of Virgin Mobile's ETC designation in Ohio, who meet the requirements to qualify for Lifeline service." (at 1).

Edgemont/OCC ignore these critical pleadings, which fully support allowing relinquishment.

Third, despite Edgemont/OCC's arguments, given that AT&T Ohio is continuing its basic local exchange service ("BLES") and given that there are 11 alternate ETCs willing and able to provide service, there is no possibility that an AT&T Ohio Lifeline subscriber would be left with no service options after relinquishment. However, if a circumstance should ever arise where an Ohio community or consumer is left unserved, Congress has provided the remedy. Under 47 U.S.C. § 214(e)(3), the FCC and/or this Commission would be empowered to "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" as an ETC. This is a powerful tool to deal with unserved areas, should any ever arise. But – and this point is key here

– those tools are not available to either the FCC or this Commission unless and until an area is found to be unserved. That circumstance is not present here.

II. EDMONT/OCC AND AARP’S OTHER ARGUMENTS ARE NOT RELEVANT

Edmont/OCC and AARP note that most of the ETCs serving the relinquishment area are resellers. Edmont/OCC Comments at 9; AARP Comments at 3-4. They then note that the FCC issued a Notice of Proposed Rulemaking (NPRM)¹⁰ seeking comments on whether the law should be changed so that resellers cannot be ETCs. Edmont/OCC Comments at 9; AARP Comments at 3-4. Based on this, they ask the Commission to defer considering AT&T Ohio’s Application until the FCC decides that issue. The Commission should reject that argument.

OCC/Edmont 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. The FCC’s proposal, however, is just that – a mere proposal, subject to stakeholder comments and an array of open questions.¹¹ There is no telling whether the FCC will adopt that 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. Indeed, the Commission itself opposes the FCC’s suggestion,¹² as do the overwhelming majority of comments filed on the issue.

Just as importantly, there is no telling *when* the FCC might act on its proposal. FCC rulemakings can languish for years. There is no basis for making AT&T Ohio potentially wait

¹⁰ *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”).

¹¹ For example, the FCC asked for comment on 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.

¹² Comments of the Public Utilities Commission of Ohio, WC Docket No. 17-287 *et al.* (filed at FCC, Feb. 21, 2018).

years for a ruling on its Petition based on the mere possibility of a future rule change.¹³ Such a delay would be tantamount to a denial of the Petition. In this regard, it is worth noting that the FCC has had a number of rulemakings or other proceedings in recent years that affect ETCs. 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. The situation here is no different.¹⁴

Finally, AARP argues that AT&T Ohio should be required to explain why it is relinquishing its ETC status in the specified areas. AARP Comments at 2-3. That is irrelevant, for nothing in Section 214(e)(4) requires an ETC to explain why it is relinquishing that status, and, in any event, AT&T Ohio explained its rationale in the Petition (at ¶¶ 7-12). There is no mystery that AT&T Ohio's Petition is prompted by changes in the FCC's treatment of ETCs and in the marketplace and consumer demand, but the reasons have no bearing on AT&T Ohio's legal right to relinquish under the binding and unambiguous federal law.

CONCLUSION

AT&T Ohio has followed the path prescribed by federal law and presented all the facts needed to grant its relinquishment request. Those facts show that (i) every exchange in the relinquishment area is served by at least 4 ETCs other than AT&T Ohio and (ii) there is absolutely no risk that customers in the relinquishment area will not continue to be served. Accordingly, federal law requires that the Commission "shall permit" relinquishment.

¹³ The same uncertainties about whether, when, and how the FCC might act in a pending proceeding apply to AARP's proposal (at 5) to defer this case based on USTA's forbearance petition regarding UNEs and resale, and therefore cut against any delay here.

¹⁴ Furthermore, the NPRM indicates 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, if the FCC did take the extremely unlikely step of not allowing resellers to be ETCs, Section 214(e)(3), discussed above, enables the Commission and/or FCC to address any situation where no ETC is willing to serve a given area by designating a carrier as an ETC and ordering that carrier to serve the unserved community or portion thereof.

Consistent with that law, AT&T Ohio requests that the Commission should grant its Petition without delay.

Dated: September 26, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this 26th day of September 2018 by U.S. Mail and/or electronic mail on the parties shown below.

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9/26/2018 4:51:22 PM

in

Case No(s). 17-1948-TP-UNC

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