

**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 RESPONSE TO THE STAFF REPORT

The Ohio Bell Telephone Company (“AT&T Ohio”) respectfully submits this response to the Staff Report issued February 8, 2019. AT&T Ohio is gratified that, after a thorough investigation, the Staff is able to acknowledge that AT&T Ohio meets the federal standard for ETC¹ relinquishment set forth at 47 U.S.C. §214(e)(4), *i.e.*, a state commission “shall permit” an ETC to relinquish its ETC designation so long as the area being relinquished is served by more than one ETC. As Staff’s investigation confirmed, there are a number of ETCs available throughout the relinquishment area ready to serve AT&T Ohio Lifeline customers once AT&T Ohio no longer offers the federal Lifeline discount. Staff is to be commended for its hard work in determining that AT&T Ohio meets the clear, objective federal relinquishment standard.

Of course, ETC relinquishment reaches far beyond Ohio. Since March of 2017, fifteen of the twenty-one states where AT&T operates as an ILEC have granted AT&T’s request to relinquish its ETC designation.² As AT&T Ohio notes in its Petition, and as Staff acknowledges, the only practical impact of AT&T Ohio’s ETC relinquishment is that eligible consumers will no longer be able to obtain a federal Lifeline discount from AT&T Ohio. That concern is very manageable. In all of the states where AT&T operates as an ILEC, qualifying consumers, like

¹ Eligible Telecommunications Carrier, or “ETC” is defined at 47 U.S.C. 214(e)(1).

² Petitions are pending in three states (including Ohio) and for various state-specific reasons have not been filed in the remaining three.

those in Ohio, already have demonstrated a clear preference for obtaining their federal Lifeline discount from a carrier other than AT&T. Indeed, since 2008, AT&T ILECs have lost more than 90% of their Lifeline subscribers nationwide. Here in Ohio, AT&T Ohio lost over 96% of its Lifeline subscribers in the ten year span from the end of 2008 (when it served nearly 186,000 Lifeline subscribers) to the end of November, 2018 (when it served only 7,248), and that decline is expected to continue.³ Once AT&T Ohio's ETC relinquishment is granted, each of its affected Lifeline customers will receive ample notice that they may obtain their federal Lifeline discount from another ETC serving their area, as so many AT&T Ohio customers have done before them. As the Staff report confirms, the Commission can grant AT&T Ohio's Petition confident that the Lifeline needs of affected Ohio consumers will be met.

The Staff Report offers five recommendations (Staff Report at 11-12), and AT&T Ohio readily accepts two of them. Specifically, Staff recommends that, as an addition to the draft AT&T Ohio notice to affected customers the Staff has reviewed and approved, AT&T Ohio also include language informing those customers they can contact the Commission if they cannot locate another ETC offering the federal Lifeline discount in their area. AT&T agrees it will add the Staff's recommended language, including the Commission's telephone number, in the multiple notices AT&T Ohio will be providing to affected customers in the relinquishment area.

Likewise, Staff recommends (at p. 12) that any "new" AT&T Ohio Lifeline subscribers added in the relinquishment area after August 23, 2018 (the date of AT&T Ohio's last supplement to its Petition), receive the exact same notice as all other affected AT&T Ohio

³ At the end of 2016 AT&T Ohio served 10,841 Lifeline subscribers. As of July 1, 2018, that number dropped to 7,946. As of November 30, 2018, that number dropped further to 7,248. Thus, in less than two years AT&T Ohio lost more than one-third of the Lifeline subscribers and continues to lose these customers at the rate of about 20% per year.

Lifeline subscribers, including the Staff's recommended language that the customers can contact the Commission if they cannot locate another ETC offering the federal Lifeline discount in their area. AT&T agrees with that Staff recommendation as well.

With regard to Staff's other three recommendations, AT&T Ohio recommends certain modifications that, while not affecting the substance and impact of Staff's recommendations, will ensure Staff's objectives are met without running afoul of federal law or otherwise adopting needless regulation.

I. AT&T Ohio will offer a discount to any former Lifeline customers in the relinquishment area who cannot find another ETC, but should be permitted to do so without the Commission designating each such customer's address as a separate "mini-ETC area."

Staff recommends AT&T Ohio automatically be re-designated as an ETC *on a per-customer basis* for individual customers in the AT&T relinquishment area who complain to the Staff they are unable to find another ETC offering the federal Lifeline discount at the customer's address during the 60-day grace period after AT&T Ohio's relinquishment becomes effective. (Staff Report at 11-12). While AT&T Ohio is willing to offer any such customers a discount – see AT&T's alternative proposal below – AT&T Ohio objects to Staff's proposal that it be designated as a "mini-ETC" for an individual customer. That aspect of Staff's proposal is inconsistent with federal law and goes farther than is required to achieve the Staff's objectives.

It is important to put this issue in the proper perspective. At this point AT&T has relinquished its ETC designations in 15 of the 21 states where AT&T operates as an ILEC. Over the two years since relinquishments began, AT&T has not become aware of a single circumstance where a former AT&T Lifeline subscriber complained he or she could not obtain a federal Lifeline discount from another ETC. That is likely to be the case in Ohio as well, given

the robust coverage of other Ohio ETCs across AT&T Ohio's relinquishment area. Indeed, and as Staff acknowledges,⁴ most of AT&T Ohio's fewer than 7,248 Lifeline subscribers in the relinquishment area⁵ reside in or near urban areas where other ETCs tend to have the greatest presence. Affected AT&T Ohio customers should be able to find an alternative Lifeline provider if that is what they want, as has been the case in every other state where AT&T has relinquished its ETC designation.

Assuming, *arguendo*, there is a need to care for affected customers who cannot find another ETC, there is no reason to adopt the Staff's per-customer "mini-ETC" proposal that is inconsistent with federal law. Staff's recommendation relies on 47 U.S.C. § 214(e)(3), which deals with the highly unusual circumstance where "no common carrier" is willing to provide voice service to an area. That is certainly not the case here. Although AT&T Ohio will no longer offer a Lifeline discount in the relinquishment area, it has made clear from the outset of this proceeding it will continue offering the same common carrier services to all customers (just without the federal Lifeline discount) until such time as it complies with the federal service discontinuance process.⁶ Even if that were not the case, Staff's investigation confirms "there are other ETCs in the relinquishment area that claim to offer service in each of the AT&T exchanges. In addition, at least one other ETC likely has the practical ability to serve AT&T's current Lifeline customers." (Staff Report at 11). Because both AT&T Ohio and other ETCs are

⁴ Staff Report at 9 ("... the vast majority of current AT&T Lifeline subscribers are in urban areas, well within the coverage area of multiple wireless carriers").

⁵ That figure is as of the end of November 2018. A small portion of those subscribers are in the retained area and will be able to remain AT&T Ohio Lifeline subscribers. Based on trends over the past 10 years, AT&T Ohio's Lifeline subscribership count will continue to decline.

⁶ See AT&T Ohio's Petition at ¶ 17. "All customers in the relinquishment area, including former AT&T Lifeline customers who choose to keep their AT&T service, will have access to services offered by AT&T at standard AT&T prices, including all applicable surcharges, fees and taxes."

continuing to offer service, there are no “unserved areas” in the relinquishment area and Section 214(e)(3) does not apply.

If AT&T and the other ETCs were not already providing service in the relinquishment area – and they are – it still would be inappropriate to designate individual customer addresses as “mini-ETCs areas.” Even a cursory reading of Section 214(e)(3) shows that the purpose of the ETC designation is to extend service to an unserved “community or portion thereof,” not to an individual customer. The intent is to ensure there is a service provider for a specified *geographic area* – not to pinpoint individual customers or addresses. And, as a practical matter, even if it were legally permissible to designate a “mini-ETC” by customer – and it is not – doing so would create a bureaucratic and reporting nightmare for AT&T Ohio, the Commission, and the FCC. AT&T Ohio would be saddled with the costs and obligations of having to generate, file and maintain a full range of ETC-related reports for each “mini-ETC” location, which could move as the customer moves, and the regulatory agencies would have to receive, analyze and catalog those reports. AT&T is not aware of any circumstance in any state where a state commission has attempted to designate a carrier as an ETC for a specific customer location under Section 214(e)(3), and this proceeding is not the place to test that idea.

Fortunately, the Commission does not need to adopt Staff’s “mini-ETC” recommendation to achieve Staff’s objective of ensuring that any eligible customer in the relinquishment area who cannot find another Lifeline provider will not be left without a discount. AT&T Ohio makes the following commitment:

If the Commission issues an Order granting the petition for ETC relinquishment, and if within 60 days after AT&T Ohio stops providing Lifeline discounts pursuant to that Order, Staff confirms that a customer currently receiving a Lifeline discount from AT&T Ohio in the relinquishment area is eligible for a Lifeline discount but cannot find another ETC offering the Lifeline discount to the customer's location, AT&T Ohio will, at a

minimum, provide that customer courtesy credits in the amount of \$9.25 per month (or the then-current FCC Lifeline discount) until the earlier of (a) the date another ETC is available to provide a Lifeline discount to that customer; or (b) one year after the effective date of AT&T Ohio's relinquishment.

Moreover, AT&T Ohio will acknowledge that the Commission retains jurisdiction to resolve any complaints arising from AT&T Ohio's relinquishment of its ETC designation in the relinquishment area that are filed with the Commission after relinquishment takes effect.

This voluntary commitment addresses Staff's concerns without any need for the Commission to try to designate it as a customer-specific "mini-ETC" in a manner that would run afoul of federal law and create pointless reporting obligations. More to the point, the commitment ensures that all Lifeline subscribers in the relinquishment area will continue to have a discount available, even in the highly unlikely event there are no other Lifeline subscribers serving a customer's location.

II. AT&T Ohio also will offer a discount to its former Lifeline customers in the relinquishment area in the unlikely event the FCC determines that resellers are no longer eligible to receive Lifeline reimbursement.

In November 2017, the FCC floated the idea that it could generate savings in the Lifeline program by disqualifying resellers from receiving reimbursements for Lifeline discounts offered to their customers.⁷ All commenters rejected the idea as being anti-consumer and unduly disruptive to the Lifeline program, and the FCC has taken no action on the proposal since. Odds are it never will.

One reason is that the proposal is rapidly becoming meaningless. The FCC's 2017 proposal suggested reseller participation in the Lifeline program be phased down over three

⁷ *Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd. 10475 (released Dec. 1, 2017) ("2017 Lifeline Order").

years.⁸ But the Lifeline voice discount is already in a phase down that ends in less than three years, on December 1, 2021. At that point no carriers will be receiving any reimbursement for the voice Lifeline discount, resellers and facilities-based carriers alike. As time marches on, it is becoming increasingly clear the FCC will simply allow the Lifeline voice discount to phase down through 2021 without creating a separate phase down for resellers.

A recent opinion from the D.C. Circuit Court of Appeals makes FCC action even less likely. That decision rejected portions of the *2017 Lifeline Order*, including an FCC finding that only facilities-based ETCs would be eligible for Lifeline reimbursement for voice discounts offered on tribal lands.⁹ The Court held that limiting Lifeline reimbursement to facilities-based carriers offering the voice discount on tribal lands was arbitrary and capricious and remanded the matter back to the FCC.

Despite the extremely low probability of any FCC action, the Staff remains concerned that, if the FCC were to buck the odds and adopt some version of its proposal, former AT&T Ohio Lifeline customers in the relinquishment area who elected to receive their Lifeline discount from a reseller would find themselves with no discount available. Staff recommends that the Commission direct AT&T Ohio to work with Staff to address the issue.¹⁰ To that end, AT&T proposes the following:

⁸ *2017 Lifeline Order* at ¶ 71.

⁹ *National Lifeline Association v FCC*, D.C. Cir., Case No. 18-1026 (Feb 1, 2019).

¹⁰ Staff proposes that, in the unlikely event the FCC adopts its “facilities-based carriers only” proposal, the Commission could re-designate AT&T Ohio as an ETC for the relinquishment area. That proposal suffers from the same defects outlined above. For one thing, just because some ETCs are no longer eligible for Lifeline reimbursement does not make an area “unserved.” As noted above, AT&T Ohio will still be present in the relinquishment area and offering the voice service supported under section 254(c) as a common carrier, just not with a federal Lifeline discount. In addition, the Staff’s proposal shortcuts the process identified in Section 214(e)(3) for designating an ETC for an unserved area. Per the statute, a state commission would first need to make a determination as to which common carriers are best able to meet the needs of consumers in the unserved area, and in order to do that the Commission would first need to conduct an investigation (. . . a state commission . . . shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof . . . “). It would be woefully premature for the Commission to find at this

If after the Ohio Commission issues an order granting AT&T Ohio's relinquishment petition the FCC adopts its proposal in FCC 17-155 that resellers are ineligible for Lifeline reimbursement as of a date certain (whether adopted in the current proceedings or another proceeding), then for the one-hundred twenty days after such reimbursement is no longer available AT&T Ohio will offer a discount equal to the prevailing federal Lifeline discount to any of its former Lifeline customers¹¹ who reside in an AT&T Ohio service area in which AT&T Ohio is no longer an ETC, subject to the following conditions:

- (a) the customer asserts in writing to the Commission and/or its Staff that, as a consequence of the FCC rule change, the customer cannot find a Lifeline provider serving the customer's residence,
- (b) the customer subscribes to an AT&T Ohio residential local exchange service for which the Lifeline discount was available in the relinquishment area prior to the granting of AT&T's petition, and
- (c) the Commission Staff notifies AT&T Ohio in writing that the customer meets the eligibility criteria for the federal Lifeline discount but resides in an area for which the Commission has not designated any ETC eligible for Lifeline reimbursement under the FCC's rule change.¹²

For such customers, AT&T Ohio will provide the discount set forth at 47 C.F.R. § 54.403(a)(2) for one year (during which the customer's discount will decline coincident with reductions established by the FCC rule), or until the customer no longer meets the eligibility criteria for the federal Lifeline discount, or until December 1, 2021, or until the Commission designates another ETC eligible to receive Lifeline reimbursement for the area in which the customer resides, whichever occurs first. In the event the Commission designates another ETC for the area in which the customer resides, AT&T Ohio will stop providing the discount when the customer begins receiving a Lifeline discount from the other ETC, or 60 days after AT&T Ohio notifies the customer of the availability of the new ETC, whichever occurs first.

juncture that AT&T Ohio should be re-designated. In any event, there is no reason for the Commission to tackle that question now. Instead, it should reserve that question until the issue actually arises. As noted above, odds are it never will.

¹¹ Determined as of the date of a Commission order granting AT&T Ohio's ETC relinquishment petition.

¹² Other than American Broadband.

III. There is no need to burden this proceeding with questions regarding exchange boundaries; rather, the Commission should direct that Staff and AT&T first attempt to resolve any issues, and only bring matters to the Commission if they cannot.

During the Staff's investigation it identified what appear to be minor discrepancies in AT&T Ohio's exchange boundary maps on file with the Commission. Staff's proposal for dealing with those discrepancies is to ask the Commission to order AT&T Ohio *in this proceeding* to file corrected maps within 60 days. (Staff Report at 13). AT&T Ohio submits that is not the most efficient or appropriate way to deal with that issue.

For one thing, the parties have not really had any opportunity to address the matter. As part of the discovery process in this docket, Staff noted over a year ago it had questions about exchange boundaries, but AT&T Ohio and Staff have not had any real discussions about the matter.¹³

More to the point, questions about AT&T Ohio's exchange boundaries have very little, if anything, to do with AT&T Ohio's ETC relinquishment. As noted in AT&T Ohio's Petition, it is retaining its ETC designation in certain census blocks for which the FCC is making available funding to provide broadband services in those areas.¹⁴ AT&T Ohio is relinquishing its ETC designation for all other portions of its service territory. Thus, any question about whether a

¹³ AT&T Ohio acknowledges that there may be some mis-matches between the exchange boundary maps maintained by Staff and AT&T Ohio's actual network facilities. Those could have occurred as AT&T Ohio extended its network to meet customer requests for service, like, for example, AT&T meeting a customer's request to run a line to an adjacent lot. It is also possible that discrepancies occurred when paper exchange boundary maps were digitized, where the software could move the lines in small but noticeable ways. There could be other factors as well. The point is, the Commission should allow Staff and AT&T Ohio to work together to address any issues, and only bring matters to the Commission if there are disagreements they cannot resolve.

¹⁴ The FCC is making funding available by census block to ensure that its broadband support is being provided on a granular, targeted basis.

subscriber remains eligible for the Lifeline discount will turn on whether that customer resides in a retained census block. The exchange boundaries are not particularly relevant.¹⁵

Rather than act on Staff's recommendation, the Commission instead should direct AT&T Ohio and Staff to meet and confer to see (a) what exchange boundary issues exist, and (b) what is the most appropriate way to deal with them. Odds are, AT&T Ohio and the Staff will be able to pinpoint any discrepancies and determine the best way to resolve them. At that point, AT&T Ohio will be able to make any necessary corrections without need for formal Commission action. If that proves not to be the case, then either AT&T Ohio, or Staff, or both, can petition the Commission to open a docket. The point is, it would be incredibly premature for the Commission to take action in this proceeding. Let AT&T Ohio and Staff work through their questions and issues before engaging the Commission.

Conclusion

AT&T Ohio accepts Staff's recommendations regarding customer notice, and asks the Commission to make the following adjustments to Staff's other proposals:

- (1) With regard to AT&T Ohio Lifeline customers in the relinquishment area who cannot find another ETC offering the Lifeline discount, adopt AT&T Ohio's alternate proposal for offering those customers discounted service; reject Staff's

¹⁵ Staff notes some of the retained area census blocks are bisected by an exchange boundary. That is true, but irrelevant. Any AT&T Ohio customers in that census block who qualify for the federal Lifeline discount will remain eligible to receive it. Any customers in that census block who are not in AT&T Ohio's service territory are not eligible to receive the federal Lifeline discount from AT&T Ohio (but may be eligible to receive it from another ETC that offers it in their area.) All of that was true before AT&T Ohio filed its relinquishment petition, and it will remain true after the petition is granted. Likewise, to the extent a dispute ever arises about whether a customer is in AT&T Ohio's service territory or not – and to the best of AT&T Ohio's knowledge no such issues have arisen in Ohio for many years – AT&T Ohio will continue to do what it has always done, specifically, work with the Staff to ensure the customer is treated fairly and appropriately and that his or her needs are met. Again, AT&T Ohio's relinquishment petition changes none of that.

unlawful proposal to designate it as a “mini-ETC” with respect to specific customers;

- (2) With regard to Staff’s concerns that the FCC might disqualify voice resellers from Lifeline reimbursement (which is highly unlikely), adopt AT&T Ohio’s proposal for ensuring any former AT&T Ohio Lifeline subscriber who loses the federal Lifeline discount from a reseller will be able to obtain a discount from AT&T Ohio pursuant to the offer outlined above; and
- (3) With regard to Staff’s concerns regarding AT&T Ohio’s exchange boundaries, direct AT&T Ohio and Staff to confer to determine (a) what exchange boundary issues exist, and (b) the most appropriate way to deal with them. If those discussions are successful and changes are necessary AT&T Ohio can file updated exchange boundary maps; otherwise the matter can be addressed in a separate proceeding.

AT&T Ohio respectfully requests the Commission to grant its Petition, subject to the modifications noted herein.

Dated: February 15, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this 15th day of February 2019 by U.S. Mail and/or electronic mail on the parties shown below.

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2/15/2019 4:33:36 PM

in

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

Summary: Response AT&T Ohio's Response to the Staff Report electronically filed by Mr. Mark R Ortlieb on behalf of AT&T Ohio and Ohio Bell Telephone Company