

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY TO THE PUCO STAFF'S REPORT AND TO AT&T OHIO'S RESPONSE
TO THE STAFF REPORT REGARDING AT&T OHIO'S REQUEST TO STOP
PROVIDING LIFELINE TELEPHONE SERVICE TO THOUSANDS OF LOW-
INCOME OHIOANS**

**BY
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OHIO ASSOCIATION OF COMMUNITY ACTION AGENCIES,
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AND
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I. INTRODUCTION

In testimony before the Ohio General Assembly last year, AT&T Ohio claimed that its managers “are not in business to lose customers.”¹ Yet, in this case, AT&T Ohio wants to force thousands of its low-income consumers to switch from AT&T Ohio’s discounted Lifeline service to Lifeline service from other companies. It’s simply a matter of AT&T Ohio not wanting to serve low-income customers at discounted rates anymore.

If AT&T Ohio’s proposal is approved, thousands of Ohioans must choose between finding another Lifeline provider (if one is available) or pay higher rates. AT&T Ohio stated in its petition initiating this case that all customers in the relinquishment area, including former AT&T Lifeline customers who choose to keep their AT&T service, will have access to other services offered by AT&T “*at standard AT&T prices, including all*

¹ Testimony of Jon F. Kelly in Support of House Bill 402, Ohio House of Representatives, Public Utilities Committee (February 13, 2018) at 4.

applicable surcharges, fees and taxes.”² In other words, these Ohioans – who depend on the low-income assistance programs that qualify them for Lifeline³ – might have to pay considerably more just to keep the phone service they now have. For many, this may mean losing phone service altogether.

Adding to the uncertainty surrounding this case is a proposal by the Federal Communications Commission (“FCC”) to eliminate Lifeline support for resellers that are not capable of offering voice and broadband.⁴ Because all the alternative providers identified in AT&T Ohio’s petition are resellers, the FCC could essentially drive the alternative providers out of business.⁵ This case is about the Public Utilities Commission of Ohio (“PUCO”) protecting the thousands of low-income customers of AT&T Ohio who may lose their provider of Lifeline telephone service.⁶

On February 8, 2019, the PUCO Staff docketed its report and recommendations regarding AT&T Ohio’s petition. The PUCO Staff recommended that the PUCO approve the petition, with essentially two conditions. The PUCO Staff recommended that

² Petition (September 7, 2017) at 9 (emphasis added). As discussed below, AT&T Ohio has proposed to offer Lifeline discounts to customers who cannot find another Lifeline provider, but only for one year.

³ The qualifying programs are Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Public Housing Assistance/Section 8, and Veterans Pension (including Survivors Pension). See <http://www.puco.ohio.gov/be-informed/consumer-topics/lifeline-telephone-assistance-program-help-with-paying-your-telephone-bill/#sthash.vmR94oaj.dpbs>.

⁴ See *In the Matter of Lifeline and Link Up Reform Modernization*, FCC WC Docket No. 11-42, et al., Notice of Proposed Rulemaking (adopted November 16, 2017, released December 4, 2017) (“NPRM”), ¶¶67-73.

⁵ See Boomerang Comments (July 30, 2018) at 3; American Broadband & Telecommunications Comments (August 27, 2018) at 3; Air Voice Comments (August 29, 2018) at 2; i-wireless Comments (August 29, 2018) at 2; Telrite Corporation Comments (August 29, 2018) at 2; Global Connection Comments (August 30, 2018) at 2; Sage Telecom Comments (August 31, 2018) at 2; Q-Link Comments (August 31, 2018) at 5.

⁶ In its petition, AT&T Ohio stated that 10,482 Lifeline customers would need to find a new provider. See Petition (September 7, 2017), ¶15. AT&T Ohio later claimed that as of July 1, 2018, the number would be 7,946. Supplemental Filing (August 23, 2018). AT&T Ohio now asserts that 7,248 Ohioans would be at risk of losing their Lifeline service. AT&T Ohio Response (February 15, 2019), at 2, n. 1.

AT&T Ohio should not be allowed to relinquish Lifeline service for at least 60 days after the PUCO issues its order.⁷ This is to give customers time to find another carrier. The PUCO Staff also recommended that the PUCO should designate AT&T Ohio as the Lifeline provider for those customers who do not have another Lifeline carrier available to them.⁸ In its response to the PUCO Staff's report, AT&T Ohio agreed to the PUCO Staff's recommendations regarding customer notices.⁹ AT&T Ohio proposed "modifications" to the PUCO Staff's other recommendations.¹⁰

The Consumer Groups – 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 – reply to the positions taken by the PUCO Staff and AT&T Ohio. The Consumer Groups continue to recommend that the PUCO protect consumers and not act on the petition until the FCC determines whether to eliminate funding of non-facilities-based Lifeline providers. By waiting for the FCC to act on its proposal, the PUCO would avoid the likelihood of consumers having to change Lifeline providers twice – once in response to AT&T Ohio's withdrawal of Lifeline service and a second time after the FCC decision. The Consumer Groups also recommend that the PUCO institute several consumer protections if it

⁷ PUCO Staff Report at 11.

⁸ *Id.* at 12. Other PUCO Staff recommendations included new language on the notice to affected customers, notice be sent to new Lifeline customers that AT&T Ohio had enrolled since the start of the PUCO Staff's investigation, and that AT&T Ohio correct its exchange boundary maps. *Id.* at 12-13. The Consumer Groups support the PUCO Staff's recommendations concerning the notice to affected customers and support correcting the exchange boundary maps, either in this proceeding or another.

⁹ AT&T Ohio Response (February 15, 2019) at 2-3.

¹⁰ *Id.* at 3.

eventually grants the petition, either before or after the FCC acts on its proposal to remove Lifeline funding for non-facilities-based providers.

II. RECOMMENDATIONS

- A. To avoid consumer confusion and the likelihood that consumers might have to change Lifeline carriers twice, the PUCO should not act on the petition until the FCC has determined whether to withdraw Lifeline funding from providers who do not have their own facilities.**

The Consumer Groups noted that 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.¹¹ 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.¹² 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. However, as the PUCO Staff recognized, the FCC's data is suspect and its reliability is the subject of an FCC investigation.¹³ Thus, the PUCO should not place complete reliance on the FCC data.

¹¹ Consumer Groups Comments (August 31, 2018) at 6-8.

¹² *Id.*

¹³ See Staff Report at 8 and n. 45.

Also of concern is the FCC proposal to eliminate Lifeline funding for providers that do not own the facilities they use. As part of its rulemaking on Lifeline issues, the FCC is considering providing Lifeline funding only to broadband service provided over facilities-based networks that also support voice service.¹⁴ Lifeline funding for non-facilities-based providers (i.e., resellers) would be discontinued.¹⁵ And funding for Lifeline providers that are partially facilities-based would be reduced to support service over the “last mile” facilities they own.¹⁶

Most competitive Lifeline providers are not facilities-based and thus could lose the federal money they rely on to provide service to low-income consumers. It appears that at least ten of the 11 competitive Lifeline carriers identified in AT&T Ohio’s petition are not facilities-based or use a combination of their own facilities and resale to provide service.¹⁷ The operations of these competitive Lifeline providers might be jeopardized if the FCC were to cut off their federal funding.

The PUCO Staff noted that nearly all the alternative providers identified by AT&T Ohio filed comments in this case stating that they would likely go out of business if the FCC adopts its proposal.¹⁸ In addition, the only carrier that has its own facilities (Virgin Mobile) might lose that designation or get out of the Lifeline business altogether.

¹⁴ See NPRM, ¶67.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Staff Report at 10. The Lifeline funding status of the lone facilities-based provider, Virgin Mobile, is unclear. Virgin is “a wholly-owned subsidiary of Sprint Corporation” and uses “Sprint’s network facilities to provide its Lifeline service to customers.” Comments of Virgin Mobile USA L.P. d/b/a Assurance Wireless (July 26, 2018). Whether the FCC would allow full funding for a Lifeline provider that provides service through its parent company’s facilities is uncertain.

¹⁸ Staff Report at 10.

Virgin Mobile is a wholly-owned subsidiary of Sprint, which owns the facilities. It is unclear how the FCC would view such an arrangement.

Further, Sprint is merging with T-Mobile, with T-Mobile being the successor in interest. T-Mobile has already relinquished its status as a Lifeline carrier in Ohio and the other states in which it operates, and it would likely relinquish Virgin Mobile's Lifeline status in Ohio if the merger goes through.¹⁹ That could leave customers without any alternatives to AT&T Ohio's Lifeline service should the FCC adopt its proposal.

The PUCO Staff's solution is to allow AT&T Ohio to withdraw Lifeline service in the affected area now, and have AT&T Ohio work with the PUCO Staff "to address the concern for current Lifeline customers being affected by AT&T's relinquishment."²⁰ The PUCO Staff noted that the PUCO "maintains its authority under 47 U.S.C. 214(e)(2)(3) to investigate and designate the common carrier best able to serve an unserved area as an ETC which could include AT&T."²¹

The Consumer Groups do not support this recommendation. Allowing AT&T Ohio to stop providing Lifeline service now could cause thousands of Ohioans to change providers at least twice – once when AT&T Ohio leaves the business and a second time if the FCC's decision causes their new carrier to stop providing Lifeline service. Waiting until after the FCC determines whether to stop Lifeline funding for non-facilities-based providers would be less burdensome on, and less confusing for, consumers.

AT&T Ohio claims it is unlikely that the FCC will remove Lifeline funding for non-facilities-based providers. AT&T Ohio points to two circumstances to support its

¹⁹ *Id.* at 11.

²⁰ *Id.* at 12.

²¹ *Id.*

view. One circumstance is that all Lifeline discounts for voice service will be phased out on December 1, 2021.²² AT&T Ohio claims that it is “increasingly clear the FCC will simply allow the Lifeline voice discount to phase down through 2021 without creating a separate phase down for resellers.”²³ AT&T Ohio’s assertion is unfounded.

Instead of being determined to phase out voice-only Lifeline discounts in 2021, the FCC is considering continuing Lifeline discounts for voice service in areas with only one Lifeline provider and in rural areas.²⁴ The FCC has expressed concern that “it is unclear whether low-income consumers would be able to obtain quality, affordable voice service in rural areas without Lifeline voice support.”²⁵ But a continuation of the Lifeline discounts for voice service could coincide with removal of Lifeline support for non-facilities-based providers. The phase-out of Lifeline support for resellers is not just to promote broadband deployment; it is also a means to combat Lifeline fraud and waste.²⁶ Thus, the FCC may have an added incentive to withdraw Lifeline support from resellers while continuing voice-only support for facilities-based providers.

The second circumstance AT&T Ohio identified to support its view about the likelihood for FCC inaction against resellers is a recent federal appellate court decision concerning Lifeline service on Tribal lands.²⁷

²² AT&T Ohio Response at 6-7.

²³ *Id.* at 7.

²⁴ *See* NPRM, ¶¶75-76.

²⁵ *Id.*, ¶76.

²⁶ *See id.*, ¶73.

²⁷ AT&T Ohio Response at 7, citing *National Lifeline Assn. v FCC*, D.C. Cir., Case No. 18-1026 (Feb. 1, 2019).

In that case, the court reversed the FCC's decision to remove Lifeline support from resellers on Tribal lands and remanded the case to the FCC for further proceedings. But the court did so on the specific facts of the case. The court determined that the FCC failed to consider important evidence such as the impact of its new policy on the purpose of Lifeline, the importance of non-facilities-based providers in promoting access to Lifeline service, the unwillingness of facilities-based providers to offer Lifeline service on Tribal lands, and the fact that many low-income consumers on Tribal lands may lose access to affordable telecommunications.²⁸ The court also reversed the FCC on procedural grounds, including failing to open a new notice-and-comment proceeding as it had promised and providing only a two-week period for comments.²⁹

Contrary to AT&T Ohio's view, the possibility that the FCC may eliminate Lifeline funding for non-facilities-based providers continues to be real. Such an action by the FCC would likely have a devastating impact on Lifeline customers, who might have no alternatives to AT&T Ohio's service available to them. The PUCO should not act on AT&T Ohio's petition until there is certainty regarding the Lifeline options available to low-income Ohioans.

- B. If the PUCO does allow AT&T Ohio to stop providing Lifeline service in the relinquishment areas identified in its petition, the PUCO should provide consumers at least the same amount of time to find another provider – 120 days – as the General Assembly has required for telephone companies that withdraw basic service.**

The PUCO has specific obligations under federal law to protect consumers where a telephone company seeks to stop providing Lifeline service. Section 214(e)(4) of the

²⁸ *National Lifeline Assn.* at 15-18.

²⁹ *Id.* at 22-27.

U.S. Code requires that before allowing a carrier to cease providing Lifeline, a state commission (like the PUCO) must require the remaining provider(s) to ensure that *all* Lifeline customers served by the relinquishing carrier will continue to be served.

The PUCO Staff has recommended that consumers be provided a “grace period” of “at least 60 days, perhaps more,” to find another Lifeline provider, if available.³⁰ The PUCO Staff reasoned that Lifeline customers may have medical devices or services that may require time to transition from AT&T Ohio’s wireline service to a wireless service.³¹ While the Consumer Groups agree that consumers may need time to find a Lifeline carrier that provides service to their homes, 60 days is insufficient time for consumers to find another Lifeline provider.

Consumers might not readily know that other Lifeline providers (if any) are available to them and might not know how to contact other providers in the area. In addition, consumers may be induced to sign up with a Lifeline provider at a retail store only to find out that the provider’s service doesn’t work at their homes. Even with the PUCO Staff’s help, consumers might have to try several Lifeline providers before finding one that has adequate service at their homes. Or they might never find a Lifeline provider with an adequate signal to their residences.³² Consumers will likely need more than 60 days to determine whether a replacement for AT&T Ohio’s Lifeline service is available to them.

³⁰ Staff Report at 11.

³¹ *Id.*

³² For example, TracFone stated it is evident from AT&T Ohio’s petition that “it is very possible that in the near future there may simply not be any facilities-based carriers able or willing to provide Lifeline supported service to [affected] customers, regardless of how much time they have to search for one.” TracFone Comments (August 31, 2018) at 2.

Lifeline service is a form of basic telephone service. The General Assembly has recognized that consumers need 120 days to find a replacement service after receiving notice that their telephone company is withdrawing basic service.³³ This includes at least 90 days of PUCO Staff assistance in finding another telephone service.³⁴ Although AT&T Ohio is not withdrawing basic service, its Lifeline customers should have the same amount of time for finding another provider as Ohio law requires for withdrawal of basic telephone service. AT&T Ohio's Lifeline customers should have at least 120 days to find an alternative provider.

The PUCO Staff's report also does not address the possible need for alternative providers to have additional time to purchase or construct facilities necessary to serve some Lifeline customers. Section 214(e)(4) of the U.S. Code requires that the remaining Lifeline provider(s) receive sufficient notice to allow the purchase or construction of adequate facilities to serve the customers and have up to one year to purchase or construct the facilities. Thus, the 60-day "grace period" proposed by the PUCO Staff does not meet the requirements under federal law for alternative Lifeline providers to obtain the necessary facilities to serve AT&T Ohio's customers.

C. The PUCO Staff's proposal to require AT&T Ohio to provide Lifeline service in unserved areas is lawful, helps to protect consumers, and should be adopted.

The PUCO Staff recommends that PUCO designate AT&T Ohio as an eligible telecommunications carrier ("ETC") for those particular customers in the affected area who do not have another Lifeline provider available at their homes.³⁵ The PUCO Staff

³³ R.C. 4927.10(A)(1).

³⁴ R.C. 4927.10(B).

³⁵ PUCO Staff Report at 12.

bases its recommendation on AT&T Ohio's own statement that customers in the affected area will continue to have access to AT&T Ohio's other services after it stops providing Lifeline.³⁶ The PUCO Staff noted that because AT&T Ohio already has facilities for providing service to each Lifeline customer's address and will continue to offer non-Lifeline service there after relinquishment, AT&T Ohio would be "the common carrier best suited to provide the requested Lifeline service."³⁷ The PUCO Staff also pointed out that the only differences between Lifeline and AT&T Ohio's other services are the Lifeline discount and the waiver of the non-recurring charge for that particular Lifeline customer.³⁸

In its response, AT&T Ohio agreed to continue offering the Lifeline discount and waiving the non-recurring charge for any customer who cannot find another Lifeline provider to their homes.³⁹ But AT&T Ohio opposes being designated as an ETC for individual customers. AT&T Ohio's claim is that such a designation is not allowed under the law. AT&T Ohio is wrong.

Section 214(e)(3) of the U.S. Code addresses the designation of Lifeline providers in areas that have no Lifeline service. The law states: "If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) of this title *to an unserved community or any portion thereof that requests such service*, the Commission, with respect to interstate services or an area served by a

³⁶ *Id.*, quoting Petition at 9.

³⁷ *Id.*

³⁸ *Id.*

³⁹ AT&T Ohio Response at 5-6. However, AT&T Ohio suggests that it be required to offer the discount for no more than one year to any customer who cannot find another Lifeline provider available at their home. *Id.* at 6. AT&T Ohio's proposed time limitation for providing Lifeline service to such customers is inappropriate, as discussed in the next section.

common carrier to which paragraph (6) applies, 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*.”⁴⁰ (Emphasis added.)

AT&T Ohio claims that for a community to be “unserved,” it should have no telephone service available at all.⁴¹ And AT&T Ohio contends that the phrase “portion thereof” does not refer to individual customers.⁴² AT&T Ohio misinterprets the law on both counts.

First, although the term “unserved community” for Lifeline purposes is not defined in the law, FCC rules, or PUCO rules, it is obvious that the law refers to communities that have no Lifeline service available. The law specifically refers to communities where no common carrier *will* (not *can*) provide supported services, including Lifeline. In other words, a community is unserved due to the unavailability of Lifeline service to all or part of the community because carriers have chosen not to provide the service there.

⁴⁰ Paragraph (6) of 47 U.S.C. §214(e) refers to common carriers that are not subject to state jurisdiction. AT&T Ohio *is* subject to state jurisdiction, and thus paragraph (6) does not apply to this case.

⁴¹ *See id.* at 4.

⁴² *Id.* at 5.

Although it might be a matter of a lack of facilities, it also could be that the local telephone company – which has facilities serving the affected area – is not an ETC.

Where all or part of a community cannot obtain Lifeline service, it is incumbent upon the state commission to determine which carrier or carriers would be best able to provide the requested service to the community or portion thereof and to order the carrier or carriers to provide the service. As the PUCO Staff noted, because AT&T Ohio has facilities that already serve the affected customers, it is the obvious choice to provide Lifeline service to those customers who do not have another Lifeline provider available at their homes.⁴³

Second, the law does not place size limits on the area for which a telephone company may be designated as an ETC. The law does not require that an ETC serve a minimum number of customers or a minimum area within a community. The plain language of 47 U.S.C. §214(e)(3) states that Lifeline service must be provided to an unserved community or “any” portion thereof that requests such service. Webster’s defines “any” as “one or some indiscriminately of whatever kind; one, some, or all indiscriminately of whatever quantity; unmeasured or unlimited in amount, number, or extent.”⁴⁴ AT&T Ohio would put limitations in 47 U.S.C. §214(e)(3) that just are not there.

The law requires that each carrier ordered to provide the Lifeline service to all or part of an unserved community “shall” be designated as an ETC for that community *or portion thereof*. Thus, if the PUCO determines (as it should) that AT&T Ohio is best

⁴³ Staff Report at 12.

⁴⁴ <https://www.merriam-webster.com/dictionary/any>.

able to provide Lifeline service to those customers in the affected area who do not have another provider at their homes, the PUCO has no alternative but to designate AT&T Ohio as an ETC for those customers. However, the PUCO need not designate AT&T Ohio as an ETC for each individual address that does not have an alternative Lifeline provider available. Instead, the PUCO should designate AT&T Ohio as an ETC for all unserved areas within the relinquishment area. “Unserved” should be defined as areas that do not have an alternative Lifeline provider available.

D. AT&T Ohio’s proposal for providing Lifeline discounts to consumers who do not have an alternative Lifeline provider available at their homes is contrary to the law, harmful to consumers, and should not be adopted.

In its response to the PUCO Staff’s report, AT&T Ohio agreed to continue providing Lifeline discounts to customers who do not have an alternative provider available at their homes, but with limitations. The Lifeline discounts would end at “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.”⁴⁵

AT&T Ohio does not explain for the reason for this limitation.

AT&T Ohio’s proposal for providing Lifeline discounts would allow AT&T Ohio to determine when Lifeline discounts to the unserved customers would end. AT&T Ohio could apparently unilaterally stop providing the Lifeline discounts when it determines that another ETC is available to the customers. In any event, the discounts would end after one year, regardless of whether the customers have an alternative Lifeline available at their homes. Under this circumstance, the customers would either pay more for

⁴⁵ AT&T Ohio Response at 5-6.

telephone service or do without. The proposal would harm consumers and is contrary to 47 U.S.C. §§214(e)(3) and (4).

Once a state commission designates a telephone company as an ETC for unserved Lifeline customers, the designation is not for a set amount of time. The telephone company would continue providing Lifeline service to the affected customers indefinitely. Apparently, the only means for the telephone company to stop providing Lifeline service to the unserved customers would be by relinquishing its ETC designation under 47 U.S.C. §214(e)(4). This would require state commission approval. The telephone company must show, in a filing at the state commission, that at least one other ETC is available to serve the affected customers at their homes.

The PUCO should protect consumers against the unlawful Lifeline program proposed by AT&T Ohio. The PUCO should reject AT&T Ohio's proposal.

III. CONCLUSION

The PUCO Staff has made a commendable effort to determine where customers in the relinquishment area are at risk of not having a Lifeline provider. However, the data relied upon by the PUCO Staff is suspect and is being investigated by the FCC. Because of this, there is uncertainty concerning findings presented by the PUCO Staff. To protect consumers, the PUCO should not act upon the petition until the FCC has determined whether to continue Lifeline funding for non-facilities based providers.

If, however, the PUCO is inclined to act on the petition, it should provide consumers in the relinquishment area at least 120 days to find an alternative Lifeline provider. To protect consumers, the PUCO should also designate AT&T Ohio as an ETC for unserved consumers in the relinquishment area (i.e., those who do not have an

alternative Lifeline provider available at their homes). And the PUCO should reject AT&T Ohio's proposed limitations on providing Lifeline to unserved consumers in the relinquishment area.

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I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission this 8th day of March 2019.

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Summary: Reply Reply to the PUCO Staff's Report and to AT&T Ohio's Response to the Staff Report Regarding AT&T Ohio's Request to Stop Providing Lifeline Telephone Service to Thousands of Low-Income Ohioans by 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 electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.