

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE PETITION OF
AT&T OHIO SEEKING TO RELINQUISH
ITS ELIGIBLE TELECOMMUNICATIONS
CARRIER DESIGNATION IN A PORTION OF
ITS SERVICE TERRITORY.

CASE NO. 17-1948-TP-UNC

ENTRY ON REHEARING

Entered in the Journal on May 1, 2019

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed collectively by the Greater Edgemont Neighborhood Coalition, the Office of the Ohio Consumers' Counsel, the Ohio Association of Community Action Agencies, the Ohio Poverty Law Center, and Southeastern Ohio Legal Services.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} Pursuant to 47 U.S.C. 214(e)(4), a state commission shall permit an eligible telecommunications carrier (ETC) to relinquish its ETC designation in an area served by more than one ETC.

{¶ 3} Pursuant to 47 C.F.R. 54.205, prior to permitting a telecommunications carrier designated as an ETC to cease providing Lifeline service in an area served, by more than one ETC, the state commission shall require the remaining ETCs to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining ETC within one year after the approval of the relinquishment.

{¶ 4} Pursuant to Ohio Adm.Code 4901:1-6-09(D)(2):

An ETC may seek to relinquish its ETC designation for an area pursuant to 47 C.F.R. 54.205 through the filing of a non-automatic application with the Commission under the case purpose code TP-

UNC. An ETC will not be relieved of its ETC designation until the Commission issues an order granting the request.

{¶ 5} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

B. Procedural History

{¶ 6} On September 7, 2017, AT&T Ohio filed a petition pursuant to 47 U.S.C. 214(e)(4) seeking to relinquish its designation as an ETC for purposes of federal Universal Service Fund support for a majority of its service area in the state of Ohio.

{¶ 7} Pursuant to its March 13, 2019 Finding and Order (Finding and Order), the Commission approved AT&T Ohio's request to exit the Lifeline service market in the proposed relinquishment area with an effective date of June 11, 2019, followed by a 60-day grace period. Consistent with the approval, AT&T Ohio was required to provide a two-phase-letter notice and bill message to all of its Lifeline customers throughout the relinquishment area.

{¶ 8} On April 12, 2019, Greater Edgemont Neighborhood Coalition, the Office of the Ohio Consumers' Counsel, the Ohio Association of Community Action Agencies, the Ohio Poverty Law Center, and Southeastern Ohio Legal Services (jointly, Consumer Groups) filed an application for rehearing of the Finding and Order.

{¶ 9} On April 22, 2019, AT&T Ohio filed a memorandum contra the application for rehearing.

C. Assignment of Error

{¶ 10} In their first assignment of error, Consumer Groups assert that the Commission's decision is unlawful, unjust, and unreasonable because it authorized AT&T

Ohio to stop providing Lifeline service to consumers based on a Staff recommendation that relied on suspect Federal Communications Commission (FCC) wireless coverage data that is the subject of a current FCC investigation.

{¶ 11} Consumer Groups assert that, based on this suspect data, Staff incorrectly concluded that 99.85 percent of the area affected by the petition would have at least one alternative Lifeline provider available. Additionally, Consumer Groups contend that Staff relied on the suspect data to conclude that only two of the addresses listed for Lifeline customers in the affected area are outside another Lifeline provider's coverage area. Further, Consumer Groups allege that, although alternative Lifeline carriers made statements that they would provide service to certain areas, this does not provide certainty that some, or any, Lifeline customers will have an alternative Lifeline provider at their homes. Therefore, Consumer Groups contend that the Finding and Order is not supported by the record in this case.

{¶ 12} AT&T Ohio rejects Consumer Groups' assignment of error. In response to Consumer Groups' claim that the Commission's decision rests on allegedly suspect data, AT&T Ohio asserts that the Commission's decision is based not only on the FCC's wireless coverage data, but also on the commitments by other ETCs to serve the relinquishment area.

{¶ 13} In support of its position, AT&T Ohio states that 47 U.S.C. 214(e)(4) only requires a showing that alternative ETCs serve the relinquishment area. Additionally, AT&T Ohio contends that the fact that the FCC is further investigating wireless coverage data does not mean that the data the Commission relied upon as part of its analysis is suspect and cannot be used for any purpose. Further, AT&T Ohio notes that the FCC has not conclusively found any of the wireless data to be inaccurate. Finally, AT&T Ohio avers that the additional consumer protections required by the Commission's Order will further ensure that no current AT&T Ohio Lifeline customer in the relinquishment area is left without Lifeline voice service.

{¶ 14} With respect to Consumer Groups' first assignment of error, the Commission determines that the application for rehearing should be denied. While recognizing Consumer Groups' contention that the FCC wireless coverage data is the subject of a current FCC investigation, the Commission points out that any such investigation is still pending and no determinations have been reported. Delaying a decision on AT&T Ohio's petition when it is uncertain if the FCC will ever act on the alleged investigation, is unwarranted. Absent a stay, the Commission is obligated to continue to process ETC relinquishment applications based on the best information available. This includes the FCC's wireless coverage data, as well as the representations of the other ETCs serving in AT&T Ohio's relinquishment area.

{¶ 15} In their second assignment of error, Consumer Groups contend that the Commission's Finding and Order is unjust and unreasonable because it limits, to one year, the time that AT&T Ohio will continue to provide the Lifeline discount to a customer who cannot find another Lifeline provider by August 10, 2019, even though the customer might not find another Lifeline provider within that year. In support of its position, Consumer Groups reference R.C. 4927.10(B)(2), that requires the Commission to examine the elimination of basic local exchange service (BLES) by an incumbent local exchange carrier (ILEC) to determine whether an alternative carrier exists to provide BLES at the customer's residence, and, in absence of an alternative, to potentially order the continued provision of BLES to the customer indefinitely. Similar to the authority granted pursuant to R.C. 4927.10(B)(2), Consumer Groups believe that the Commission should require AT&T Ohio to continue the provision of Lifeline service beyond one year to those customers who still do not have an alternative Lifeline provider's service at their homes.

{¶ 16} AT&T Ohio rejects Consumer Groups' second assignment of error. In response, AT&T Ohio contends that this claim has nothing to do with whether AT&T Ohio has met the legal standard for relinquishment. AT&T Ohio submits that it voluntarily proposed the one-year extended Lifeline discount as a reasonable additional

accommodation to address a situation that will likely never arise, given the steady exodus of Lifeline customers from AT&T Ohio to other ETCs over the past number of years.

{¶ 17} With respect to Consumer Groups' second assignment of error, the Commission finds that the application for rehearing should be denied. In reaching this determination, the Commission finds that R.C. 4927.10 is distinguishable from the obligation to offer Lifeline service, inasmuch as R.C. 4927.10 pertains specifically to the obligation to provide BLES, whereas relinquishment of Lifeline service is reviewed and ruled on by the Commission pursuant to federal law and regulations.

{¶ 18} Additionally, the Commission notes that, pursuant to its Finding in Order in this case, adequate protection will be provided to those subscribers who are unable to receive Lifeline service from an alternative ETC. Specifically, if the Commission Staff confirms that a customer currently receiving a Lifeline discount from AT&T Ohio and residing 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. See, Finding and Order at 17-18.

{¶ 19} Further, the Commission recognized it has continued oversight authority pursuant to Ohio Adm.Code 4901:1-6-09, 47 U.S.C. 214, and 47 C.F.R. 54.205. See, Finding and Order at 23. This includes the authority to determine which common carrier(s), including AT&T Ohio, are best able to serve an unserved community or portion thereof, and to designate an ETC to do so.

{¶ 20} In the third assignment of error, Consumer Groups assert that the Commission's Finding and Order is unjust and unreasonable because it did not address situations where an alternative Lifeline provider must acquire or construct facilities in order to serve a current AT&T Ohio Lifeline customer who must change providers and,

thus, some customers could lose their Lifeline service. In support of this position, Consumer Groups reference 47 U.S.C. 214(e)(4) and the requirement that the new Lifeline provider has up to one year to construct or acquire any facilities needed to serve the customer. Therefore, Consumer Groups believe that the Commission should have required that AT&T Ohio continue to provide the Lifeline discount to such customers during the one-year construction period.

{¶ 21} AT&T Ohio rejects Consumer Groups' third assignment of error. In response, AT&T Ohio believes that this assignment of error is irrelevant, in that the Finding and Order does not identify any area where new construction is needed to ensure that AT&T Ohio Lifeline customers will continue to have access to voice service after relinquishment.

{¶ 22} As further support for its position, AT&T Ohio notes that other ETCs already exist with the capability and commitment to serve customers in the relinquishment area, including the relatively small number of AT&T Ohio Lifeline subscribers who elect to obtain their Lifeline discount from another provider. Additionally, AT&T Ohio notes that no existing AT&T Ohio Lifeline customer will be left without voice service due to the fact that AT&T Ohio will continue to provide the same basic voice service, just without the Lifeline discount.

{¶ 23} With respect to Consumer Groups' third assignment of error, the Commission determines that the application is denied. As noted above, AT&T Ohio ETC subscribers who are unable to locate another ETC provider are entitled to continue to receive Lifeline credits for a period of up to one year after the effective date of AT&T Ohio's relinquishment. Additionally, the Commission has continued oversight authority pursuant to Ohio Adm.Code 4901:1-6-09, 47 U.S.C. 214, and 47 C.F.R. 54.205 to determine which common carrier(s), including AT&T Ohio are best able to serve an unserved community or portion thereof, and to designate an ETC to do so.

III. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the application for rehearing of Consumer Groups be denied as set forth above. It is, further,

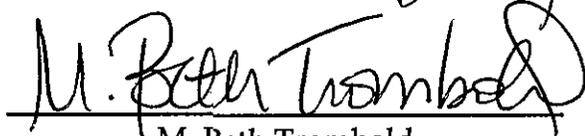
{¶ 26} ORDERED, That, to the extent not specifically addressed herein, all other arguments raised in the application for rehearing are denied. It is, further,

{¶ 27} ORDERED, That a copy of this Entry on Rehearing be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

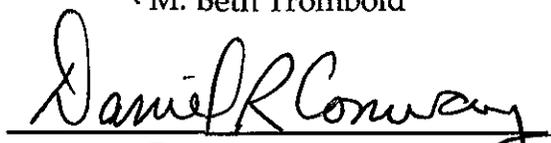


Sam Randazzo, Chairman

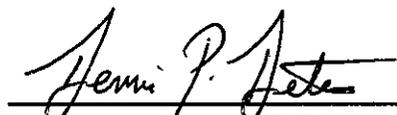


M. Beth Trombold

Lawrence K. Friedeman



Daniel R. Conway

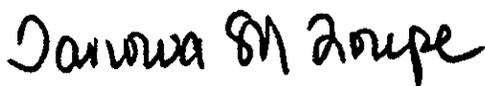


Dennis P. Deters

JSA /mef

Entered in the Journal

MAY 01 2019



Tanowa M. Troupe
Secretary