

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

_____)	
In the Matter of)	
)	
American Broadband &)	
Telecommunications Petition for)	WC Docket No. 09-197
Forbearance from Eligible)	
Telecommunications Carrier Facilities)	
Requirements)	
_____)	

**REPLY COMMENTS OF
AMERICAN BROADBAND & TELECOMMUNICATIONS**

American Broadband & Telecommunications (“American Broadband”), through its undersigned attorneys, responds to the Federal Communications Commission (“FCC” or “Commission”) Public Notice seeking comment on American Broadband’s petition for forbearance filed in Docket No. 09-197 (DA 11-641) (“Petition”).

American Broadband’s Petition requests forbearance from enforcement of Section 214(e)(1)(A) of the Communications Act of 1934, as amended, which would allow it to promptly seek approval from the Public Utilities Commission of Ohio to provide wireless Lifeline services in that state. Grant of the petition will allow American Broadband to increase the availability of reduced cost telecommunications services, which will greatly benefit low-income customers during these difficult economic times.

Comments on the Petition were due by May 9 and no comments opposing the petition were filed. In addition, American Broadband notes that two letters, from the Lucas County Department of Job and Family Services and the ODJFS of Cuyahoga County, were filed in support of the Petition and urged the Commission to review and grant the Petition promptly.

The Michigan Public Service Commission (“MPSC”) filed Reply Comments in which it suggested that Commission action on the Petition “may assist States that are struggling with

similar ETC applications and the level of facilities an applicant must own, and where these facilities should be located, to be considered facilities-based for reimbursement from the federal Universal Service Fund.”¹ As explained below, American Broadband’s Petition for ETC status in Michigan is separate and distinct from this Petition and the two should have no impact on one another.

American Broadband explained in footnote 1 of its Petition, and in response to a MPSC staff request for clarification,² that although it meets all of the qualification of a facilities-based wireless provider for purposes of ETC status, American Broadband is requesting *forbearance from the facilities-based requirement* so that it may expedite the provision of service in Ohio. American Broadband initially sought facilities-based wireless ETC status in Ohio. Unfortunately, it became clear that Ohio was hesitant to grant facilities-based ETC status to a wireless carrier that is not a spectrum licensee absent further clarification from the FCC about how to interpret the facilities requirement. Therefore, to expedite its entry in the wireless Ohio ETC market, American Broadband sought Commission forbearance from the facilities requirement in order to offer *non-facilities-based* wireless service as an ETC. In short, the Commission does not have to, and should not, address questions about how to interpret the facilities requirement in response to the Petition.

Unlike Ohio, Michigan has decided that a carrier purchasing underlying wireless service as a reseller but providing some of its services through its own facilities may be designated as a facilities-based ETC without a prior forbearance order from the FCC.³ Based upon that state precedent, American Broadband intends to proceed with its facilities-based wireless ETC application in Michigan.

¹ MPSC Comments, at 3.

² See American Broadband May 9, 2011 Supplement to Michigan Application, at 4, available at: <http://efile.mpsc.state.mi.us/efile/docs/16519/0002.pdf>.

³ *The Matter of the Application of Nexus Communications, Inc., for clarification or designation of its eligible telecommunications carrier status in the state of Michigan*, MPSC Case No. U-15694, Opinion and Order (dated Dec. 23, 2008).

While American Broadband's Petition was not explicitly limited to Ohio, it is that state which has the most urgent need for additional low-income service and for which American Broadband seeks expedited review and approval of its Petition. To the extent other states refuse to grant it facilities-based wireless ETC status, American Broadband would use the forbearance grant to apply for non-facilities-based wireless status in such states. Grant of forbearance would enable American Broadband to advance the deployment of discounted telecommunications services to low-income customers. In the interest of administrative efficiency, and of low-income consumers who would benefit from additional wireless Lifeline options,⁴ American Broadband urges the Commission to act promptly to review its Petition so that it may quickly initiate its wireless Lifeline services to low-income consumers. In particular, American Broadband requests that the Commission not take the entire year, plus three month extension, that is the outside deadline for action on forbearance petitions. Rather, American Broadband respectfully requests that the Commission consider and act on its Petition in conjunction with another similar petition due to be decided no later than September 19, 2011.⁵

Respectfully submitted,

/s/ Tamar E. Finn

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⁴ See Letter from Lucas County Department of Job and Family Services, WC Docket No. 09-197 (May 2, 2011) (addressing the "urgent need for [American Broadband's] proposed service in Ohio" and request for expedited processing of the petition); Letter from ODJFS Cuyahoga County, WC Docket No. 09-197 (May 3, 2011) (noting there is a "need for low-cost wireless telephone services in the state").

⁵ See e.g. *Cricket Communications, Inc. Petition for Forbearance*, Order, DA 11-878 (rel. May 16, 2011) (extending the deadline for consideration of the petition by 90 days until September 19, 2011).