



House Public Utilities and Energy Committee

HB 218 Testimony

Submitted by:

Janine L. Migden-Ostrander
Consumers' Counsel

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TESTIMONY OF JANINE MIGDEN-OSTRANDER
CONSUMERS' COUNSEL
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Chairman Hagan and members of the House Public Utilities and Energy Committee, thank you for giving me the opportunity to present the perspective of the Office of the Ohio Consumers' Counsel, the residential utility consumer advocate. I am Janine Migden-Ostrander, the Consumers' Counsel for Ohio and with me today are Dennis Stapleton, Director of Government Relations and representatives of my office's Telecommunications Team.

I am here today to express concerns with parts of HB 218, specifically the sections that would open the door for incumbent local telephone companies to raise rates for basic local telephone service. The premise of this portion of the bill is that telephone companies need pricing flexibility – that is, they need to increase rates for basic telephone service – in order to be competitive. This premise is incorrect because there is no competition for basic telephone service.

The legislation as currently written does not benefit consumers who would like to continue with just basic local telephone service. It will not advance the availability of adequate basic local service to citizens throughout the state, nor will it promote just and reasonable rates and charges for telephone service, two statutorily recognized policies of this state. The bill would allow incumbent local telephone companies to seek greater freedom to raise prices on essential services in order to meet competition. This does not make sense – competition should give consumers lower prices, not higher. In addition, the companies do not have to provide justification for raising basic service rates. If this

bill is allowed to become law, thousands – possibly millions – of Ohio’s residential customers would likely be forced to pay more for basic telephone service.

The current rules under which incumbent telephone companies in this state operate allow pricing flexibility for **all** services other than stand alone basic local service and basic Caller ID. These rules – based on a 2001 Public Utilities Commission of Ohio (“PUCO”) finding that all incumbent telephone companies in the state were “subject to competition” – or had “reasonably available alternatives” – already provide incumbent local service providers with the ability to have more regulatory flexibility than that found in most other states.

The incumbent local telephone companies supported these regulations in proceedings at the PUCO. Seven of the eight largest incumbent telephone companies in Ohio¹ – serving 83% of the state’s access lines – have voluntarily entered into alternative regulation plans in which they agreed to cap basic local service rates indefinitely, provide enhanced Lifeline benefits, and provide broadband service in some rural areas, in exchange for almost unfettered pricing freedom for their services other than basic local service and basic Caller ID. The commitments to cap basic local rates, provide broadband and provide Lifeline were meant to be benefits consumers received – the quid pro quo – in exchange for the incumbents’ additional pricing flexibility. My office has prepared a chart that shows that consumers have been subjected to frequent rate increases for non-basic services as a result of this pricing flexibility. I believe the same thing will happen to basic service once the rate caps are eliminated.

¹ Sprint, SBC Ohio, Cincinnati Bell, CenturyTel, Chillicothe Telephone, ALLTEL and Western Reserve Telephone. Only Verizon does not operate under elective alternative regulation.

The rate cap provision of Ohio's alternative regulation ensures the reasonableness of basic local service rates. This brings certainty and stability to consumers. I do not believe that there is any reason that would justify removal of the cap on basic local service.

The bill allows removal of the cap by treating basic local service like other services. To the extent that such treatment is allowed, at the very least the cap should be modified, not abandoned, as I will expand upon later.

Contrary to what the witnesses for SBC implied, the problem is that there is essentially no competition for stand alone basic local telephone service in Ohio. No provider – wireline, wireless, cable or Internet-based – markets stand alone basic service to residential consumers. Almost all companies market only packages of features that cost much more than basic local service. While some consumers want these packages, many others want just basic local service – a dial tone and the ability to make local calls. Some competitive companies will make basic local service available if asked, but they do not serve the entire state.

This legislation enables traditional providers to raise the charge for basic local service to where it is not affordable. Unfortunately, there is less competition for residential telephone service in Ohio now than there was just over three years ago when the PUCO made its determination that all incumbent local providers are “subject to competition.”

The incumbent telephone companies themselves have helped reduce the level of competition for residential customers. The two largest competitors for residential customers will soon no longer exist. SBC is in the process of buying-out AT&T and

Verizon is acquiring MCI. When these two mergers are approved, competition will be even scarcer than it is now.

The supposed competition to incumbent local telephone companies from cable, wireless and Internet-based – known as VoIP – phone providers is largely a myth, especially when it comes to stand alone basic local service. Cable, wireless and VoIP service providers offer bundled services almost exclusively. Only the traditional local phone companies offer stand alone residential basic local service throughout – or at all – in their service territories. On the cable side, consumers cannot subscribe to a cable provider's telephone service unless they reside in the cable provider's service territory. Unfortunately, many rural areas are still not served by any cable provider.

Wireless service is more widely available than cable, although still not available everywhere. For example; there are areas in southeastern Ohio that have no wireless service available, and might not be able to have wireless service due to terrain. In addition, the cost of using wireless service is often greater than the cost of traditional basic local telephone service. Wireless companies generally have higher monthly rates than traditional local phone companies, and may have roaming and overage charges that accrue with some calling plans. As a result of these problems, few customers have abandoned their home telephone service for wireless service. Rather, customers tend to view wireless service as a complement to, not a substitute for, their wireline service.

VoIP service is also not a true substitute for traditional local phone service. Although the cost of VoIP service itself is often comparable to traditional local phone service, customers incur the additional cost of buying broadband service in order to get

VoIP, which can double the monthly cost.² Also, VoIP service is not as dependable as traditional phone service. For instance, VoIP service is not available during power outages, or when the consumer's computer is not functioning or – if provided over cable facilities – when cable service is interrupted.

In addition, cable, wireless, and VoIP customers are not afforded the same consumer and safety protections as traditional home telephone customers. For example, Ohio's service quality standards do not apply to these three industries. Most disturbing is the lack of emergency 9-1-1 services with these technologies.

Further, many of the companies offering these other services are affiliates of traditional local phone companies. SBC is the majority owner of Cingular Wireless, and the two other largest wireless companies – Verizon and Sprint – also own local phone companies. SBC has begun its own VoIP service, and is buying AT&T, which is already a VoIP provider in SBC's territory. To characterize these affiliate offerings as "competition" can be misleading.

The fact is that, right now in Ohio, there is not a practical substitute or competitive option for stand alone basic local service provided by incumbent local telephone companies. So it makes no sense to allow companies regulatory flexibility to increase rates for residential basic service, which is what this bill allows.

This is not the result that the General Assembly sought more than 15 years ago when it decreed in HB 563 that the policy of this state is to "ensure the availability of adequate basic local service to citizens throughout the state."

² Monthly costs for broadband service can range from \$20 to \$50.

Residential customers – especially elderly, low-income and rural residential customers – will receive no benefit from this bill. One of my staff is struggling with having to explain to her 84-year old mother why she will have to pay more for her monthly phone service or to accept additional services that she does not want or will not use. Consumers need protections to ensure that basic local telephone service is available and affordable. They also need to have comparable consumer protections – such as those found in Ohio’s minimum telephone service standards (“MTSS”) – to apply to all telephone services. Incumbent providers should also be required to meet specific, enforceable commitments before they are allowed any additional pricing flexibility.

To that end, I make the following recommendations for this bill:

1. Stand alone basic local telephone service rates should not be deregulated. As I mentioned earlier, the lack of competition for stand alone basic local telephone service would put the state’s residential basic service customers at risk for significantly higher monthly bills without comparable choices. This is not in the public interest.

2. If stand alone basic local telephone service is to be deregulated, it should not happen anytime soon. There should be a phase-in period, which would include rate freezes or rate caps for stand alone basic local telephone service, to allow residential customers to adjust to the new regime. There are a number of alternative regulation schemes being proposed across the country that consist of permanent rate caps of basic local service while other rates are deregulated.³ Other proposals call for modified rate caps. For instance, a number of states have legislation pending which would cap rates for

³ Utah (SB108) and Texas (SB 332) requires that basic local service rates be capped. Indiana (SB 381) caps basic service rates until June 30, 2010 (after which it is deregulated if at least 50% of households within an area have access to broadband service). North Dakota (SB 2216) caps residential service at \$18 a month. The Colorado Commission is considering a stipulation in a Qwest deregulation proceeding that would not impact residential basic local rates.

a specific period of time.⁴ Other states have proposed rate caps with provisions that permit adjustments based on different inflation based indices.⁵ Still other states' proposals contain specific periodic increases to the rate cap over the term of the alternative rate plan.⁶ These modifications to the basic local rate cap would bring more pricing flexibility to telephone companies without necessarily impeding the provision of stand alone basic local service at just and reasonable rates.

3. I urge you to ensure the continued viability of the MTSS. In fact I would urge the legislature to require appropriate standards comparable to the MTSS be required of all companies providing voice transmission services. Provisions of the bill as written could be interpreted to read that some telephone companies can be exempted from Ohio's service quality standards. Thus, the PUCO would be one step away from exempting all telephone companies in the state from the service quality standards.

If that happens, I believe we will see a "race to the bottom" in telephone service quality in this state. A look at the wireless industry's service quality bears this out. The wireless industry is often used as a shining example of letting the marketplace regulate itself. Yet last year a University of Michigan study found that out of 40 industries rated, wireless was 39th in customer satisfaction; only the cable industry was worse. We cannot

⁴ Illinois (SB 1700) would cap basic service rates through July 1, 2008.

⁵ Alabama (SB 114) would cap basic local rates for 18 months; beginning in 2008, annual rate increases are limited to the Consumer Price Index. South Carolina (under legislation that became effective on February 16, 2005) caps basic local service for two years after which annual changes are based on an inflation-based index. Tennessee (SB 1282) caps basic local rates for four years after which rate increases are limited to annual changes in the gross domestic product-price index. New Mexico's alternative regulation has price caps.

⁶ Iowa (HB 277) requires that the residential flat rate may be increased by \$1 every year beginning on July 1, 2005 and ending June 30, 2008 up to a \$19 ceiling. Minnesota (SF 1540) proposes that basic service rate increases are limited to 50 cents a month in the first year, then 50 cents per month in each of the next five years. The North Carolina Commission limits basic service rate increases to 10% a year. Idaho (HB 224) requires a three year transition period and during the first year, basic rate increases are limited to 10%.

afford to allow telephone service quality to deteriorate in Ohio. We must maintain a strong MTSS. The current legislation must be revised to make sure this protection is crystal clear.

4. I also urge you to remove the exemption from R.C. 4931. R.C. Chapter 4931 contains the laws governing 9-1-1 service. No telephone company – no matter what technology is used to deliver the consumers’ dial tone – should be exempted from those provisions. The proposed bill needs to be changed to make this happen.

5. Before incumbent local companies should be able to deregulate stand alone basic local telephone service, they should provide broadband service throughout their service territories. The telephone industry has said that this bill is necessary to bring all the benefits of competition to all Ohioans, and that part of that competition involves the use of broadband technology for voice and data services. Yet there are many places in this state – mostly rural – where broadband technology is not available. You have probably been contacted by your constituents about the lack of availability of broadband service. The proposed legislation does not provide assurance that this situation will improve.

If the General Assembly allows deregulation of basic local service because of so-called competition, we need to be assured that all Ohioans, including those in rural Ohio, have access to state-of-the-art broadband services before that deregulation occurs.

6. The PUCO made enhanced Lifeline benefits a specific requirement for the alternative regulation plans under R.C. 4927.03. This bill may weaken or eliminate that requirement. If basic local service is deregulated, the elective alternative regulation rules, including the Lifeline commitment required by the rules, might become obsolete.

Especially if rate increases are allowed for basic services, the current Lifeline programs must be left intact or further enhanced. At a minimum if basic local service rate increases are allowed, the Lifeline support amount must be increased to match the cost. These programs protect low-income residents and must not be undermined. The bill as introduced does not explicitly protect low-income consumers and Ohio's lifeline programs that have served as a model for other states.

7. I urge you to replace "barriers to entry" with a "viable competition" requirement. The bill allows alternative regulation for basic service if the PUCO finds there are no barriers to entry. The term "barriers to entry" is not defined; there are some who would argue that all barriers to entry were removed when the 1996 Telecom Act was enacted. Others could also argue that the PUCO already found there were no barriers to entry throughout the state for all services in its elective alternative regulation orders.

Such a generalized approach can be misleading. For instance, there may be barriers to entry in rural areas that are not present in urban areas and there may be barriers to entry for competition for residential customers that do not exist for competition for business customers. And there may be barriers to entry for stand alone basic service that do not exist for high-priced bundles or deregulated wireless or broadband services. Nevertheless, a finding that entry barriers do not exist for some customers could affect other customers.

Moreover, even if there are no barriers to entry, that does not ensure that competition will in fact occur. There should be no deregulation of residential basic local service unless it can be shown that viable competition is present for that service, for the

company providing that service, in the territory where that service is offered, and at comparable rates.

If this bill is not, in fact, intended to allow basic rates to increase in the absence of actual competition for basic local service, then that specification should be in the bill. The PUCO determined that all incumbent telephone companies in the state are “subject to competition” based on the potential for competition, instead of relying on the existence of actual competition. In implementing this bill, the PUCO’s previous determination may make it difficult for the PUCO to avoid deregulating basic local service – which the companies will use to raise rates. Basic local service is too important to this state to permit that.

Conclusion

The General Assembly should not allow basic local telephone service rates to be deregulated. There is no need for incumbent local telephone companies to be able to raise basic local service rates outside the current regulatory framework. If such rate increases are allowed, the lack of competition for stand alone basic local service could harm millions of Ohio’s residential customers.

In addition, since the legislation lacks **any** consumer benefit, it is not in the public interest. It does not advance the policies of this state 1) to ensure availability of adequate basic local service or 2) to maintain just and reasonable rates.

I look forward to working with Representative Daniels, and the House Public Utilities Committee, on behalf of Ohio’s residential telephone consumers, to rewrite provisions of this proposed bill to remedy the problems I have pointed out today. I thank

you for the time to present this testimony and would be happy to answer any questions you may have.