



**Senate Energy and
Public Utilities Committee**

SB 134/HB 218

Submitted by:

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TESTIMONY OF JANINE MIGDEN-OSTRANDER
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SB 134/HB 218

Chairman Schuler and members of the Senate Energy and Public Utilities 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 SB 134 and its companion bill, HB 218 that passed out of the House last week. Specifically, the section that would open the door for incumbent local telephone companies to raise rates for basic local telephone service needs to be addressed. The premise of this portion of the bill is that telephone companies need pricing flexibility – that is, they need the ability to increase rates for basic telephone service – in order to be competitive. The premise is faulty competition should give consumers lower prices, not higher.

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 maintain just and reasonable rates and charges for telephone service, as stated in Ohio Revised Code 492.02. These bills would allow incumbent local telephone companies to seek greater freedom to raise prices on essential services without any justification. If either of these bills is allowed to become law, hundreds of thousands 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.

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.

These two bills allow 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 wireline, wireless, cable or Internet-based service provider – markets stand alone basic service to residential consumers. Almost all companies promote packages of features that cost much more than basic local service.

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

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 the ability 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 even a year or two ago.

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 service – known as Voice over Internet Protocol (VoIP) 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. Bundled services or packages do not allow for ala carte shopping. Thus, if a consumer wanted only basic local service and nothing else but only packages of services were available, that consumer would have to pay more to purchase services that they may not want. Only the traditional local phone companies offer stand alone residential basic local service throughout 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.

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

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.”

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 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. In fact in the last several weeks Texas did not approve similar legislation and just last week Illinois passed legislation that extended the state’s current Telecommunications law through July 1, 2007 and referred similar legislation as you are looking at today back to committee. Ohio does not need to order to “catch up” with other states since Ohio is already out

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 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.

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

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.

⁴ Illinois (SB 1700) would have capped basic service rates through July 1, 2008. (Referred to Reference Committee)

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%.

customer satisfaction. We cannot 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 commend the House for inserting language last week in HB 218 that protected 9-1-1 service and I would recommend the Senate do likewise in SB 134.

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. I also commend the House for inserting language last week in HB 218 that protects the continuation of Ohio's Lifeline assistance programs. SB 134 should also be changed to reflect the Lifeline commitment. The PUCO made enhanced Lifeline benefits a specific requirement for the alternative regulation plans under R.C. 4927.03. SB 134 as written would weaken or eliminate that requirement.

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 these bills are 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 bills. 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 Senator Schuler and the Senate Energy and 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.