



Office of the  
Ohio Consumers' Counsel  
*Residential Utility Consumer Advocate*

**TESTIMONY BEFORE  
THE HOUSE PUBLIC UTILITIES COMMITTEE**

Submitted by:  
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## **INTRODUCTION**

Good morning, Chairman DeGeeter, Vice Chairwoman Williams, Ranking Minority Member Snitchler and members of the committee. My name is Janine Migden-Ostrander and I am the Ohio Consumers' Counsel.

The Office of the Ohio Consumers' Counsel (OCC) represents more than 4.5 million residential households with respect to utility issues, including telephone service – all of which are necessities. Thank you for the opportunity to testify before you regarding Amended House Bill 276 (HB 276) and the recent amendments proposed. While the OCC appreciates the many changes proposed for HB 276, as the advocate for Ohio's residential telephone customers, we nevertheless remain opposed to this legislation. However, the OCC is supporting three additional amendments which if adopted, would change our position on this legislation.

First, I would like to comment on the process the House has used in its deliberations of this important legislation. As a lawyer, I believe strongly in due process and the opportunity for all parties to be heard. I commend Committee Chair DeGeeter for the time he made available to all the stakeholders and his willingness to listen and consider diverse viewpoints. I know this was not an easy process. Often, it was probably frustrating because every time an issue seemed to be resolved for one party, it created a problem for another. So while the OCC remains disappointed by the legislation as currently proposed, we appreciate that our voices were heard. As a result, the legislation today is better than it was when originally submitted; however it is still a long way from adequately protecting residential telephone consumers.

Fair compromise can only be achieved if all the parties are willing to engage in a dialogue that includes understanding and give and take. The telephone industry has been unwilling to participate in this good faith negotiation, probably because it calculated it could benefit more by refusing to do so. Thus, these negotiations may produce a public policy that is less than what it could have been. Without additional amendments, this legislation rewards the telephone industry and its behavior, while harming residential consumers.

I would like to further address the legislation as it stands now. We appreciate some of the key improvements and thank Representatives DeGeeter and Sayre for the following proposed amendments:

- Restoration of some consumer protections for customers with basic local service;
- Restoration of one consumer protection for all telephone consumers:  
A warm line for 911 emergency calls for telephone customers who have been disconnected for non-payment;
- A freeze on low-income Lifeline rate increases through 2011; and
- The inclusion of free voicemail in the legislation.

However, the consumer protections for basic local exchange customers need to be extended to ALL telephone customers – a crucial point I will address in greater detail later in my testimony.

In evaluating whether to support or oppose HB 276, the threshold question for Ohioans should be: are residential consumers better or worse off with this legislation? Unfortunately, the answer still remains, that even with these improvements, consumers are worse off. This is largely due to the loss of consumer protections for the majority of subscribers who purchase bundles or packages of telephone or telecommunication services. Today, consumer protections apply to ALL customers. If the proposed legislation is passed in the current form, this will not be the case. ONLY the customers with basic local service will be protected.

As Ohio's policy makers, you have within your power to protect residential consumers – your constituents. Today we urge you to consider three additional amendments. With the adoption of all three of these amendments, the OCC would not oppose the legislation. They are:

- The restoration of consumer protections for ALL customers, including those with bundled or packaged services;
- Extension of the freeze on basic exchange rates for Lifeline customers from one year to five years;
- The elimination of the ability of telephone companies to seek a waiver of their obligation as provider of last resort, or in the alternative, a

better process that includes notice to customers, public hearings and a more detailed filing by the telephone company, with the period of deliberation for the Commission being extended from thirty days to ninety days.

## **DISCUSSION OF OCC-PROPOSED AMENDMENTS TO HB 276**

### **A. The Same Consumer Protections Should Apply to ALL Consumers**

As I mentioned earlier, the proposed legislation creates a two-tiered system of consumer protections. It is incorrect to state that this bill restores consumer protections to customers, for it does so in part, and ONLY TO a minority subset of customers. If “a level playing field” is the basis for stripping away decades of consumer protections, one has only to look at information provided by the Attorney General’s Office during Consumer Protection Week (See Attachment A). This attachment lists the top categories of complaints received by the Attorney General’s Office. Issues involving internet and phones are listed as fourth, providing a window into what may come in the absence of adequate consumer protections. How is subjecting more consumers to a dearth of protections in the public interest? If a level playing field is what is needed, let’s raise, not lower the bar on consumer protections.

For example, the repair and billing standards that are applicable only to basic service customers in the amendments to the bill need to be extended to customers with bundled service. The telephone industry says that alternatives are available to customers. In some cases, consumers are able to choose among several providers for service. However, the sad reality is that – 14 years after Congress passed legislation intended to jumpstart telephone competition – many consumers in rural, and even some urban areas of Ohio, still cannot “vote with their feet.” There is no alternative provider in many areas of Ohio offering a service that is comparable in price or quality to the Incumbent Local Exchange Carrier’s (ILEC’s) service.

Customers of bundled services need the same protections for service repairs, billing and reconnection as customers with basic service. Bundled service customers who cannot call 9-1-1 because of a service outage face the same potentially tragic

consequences to life and property as basic service customers. HB 276 should not eliminate these consumer protections for bundled service customers. I refer you to my prior testimony before this Committee that goes into greater depth about the loss of consumer protections for consumers taking bundles and packages. The bottom line is that there is no good policy reason to create a system where “some will have little vs. others who have nothing” when it comes to protections for telephone customers – the protections are a necessity for ALL Ohioans.

### **B. Lifeline**

We appreciate the proposed Lifeline amendment which would freeze increases in basic rates to Lifeline customers until January 1, 2012. However, we are still concerned with the potential rate increases that could face Lifeline customers in 2012 and beyond. Their rates would increase in tandem with increases to basic local service rates. This means that, unlike the current situation, low income customers could see \$1.25 per month added to their phone charges every year (\$15 per year). Such increases are burdensome on those who can least afford it. For consumers who are at or below 150 percent of the poverty guideline and struggling to survive amid increased costs for many basic services, increasing the cost for essential telephone service just compounds their financial burden. These consumers should be able to communicate with family, health care providers, potential employers, etc. Think about how many times a day you use a phone and the variety of reasons that you do and then imagine not having access to a phone at all because you cannot afford it. Think of others who may be elderly, alone, have a disability or who may be isolated in a rural part of the state. The telephone **is** their lifeline and we should preserve that necessity for our most vulnerable populations. Lifeline customers should be shielded from such increases for at least five years after the effective date of the legislation.

### **C. Carrier of Last Resort Protections**

Current PUCO rules require ILECs to provide basic telephone service to consumers in a specific area. This ensures all Ohioans will have access to a landline

telephone provider. HB 276 allows telephone companies to apply to the PUCO for a waiver of this obligation. The waiver provision for the carrier of last resort obligation would open the door for ILECs to avoid their obligation to provide basic service – or all service – to an area – whether an exchange, part of an exchange, or a neighborhood -- for whatever reason. There's no requirement that the ILEC show that other companies are providing telephone service throughout the area, so customers could be left without any alternative service. The waiver provision should be deleted or at least amended to require that customers are personally notified of the application, that the application provide specifics regarding the number of customers affected and alternative phone services available in the area, and that there be a hearing on the application whereby the company must justify its application.

The potential impact of the waiver provision is that customers could be left without basic service if a telephone company found that it was not profitable enough for them to provide basic service. This could occur in a number of different scenarios; a company may elect not to provide service in rural areas where the cost to bring in a new line is not profitable; redlining in low-income areas where there are consumers with bad debt and/or who have faced disconnections; discontinuing service in a neighborhood where there is a high proportion of basic service customers that the ILEC wants to force onto a bundle or package of telephone services to increase profits; and/or any other reason at the ILECs discretion. Additionally, if the ILEC no longer has to provide basic local service as the carrier of last resort, thereby forcing customers onto more expensive, unwanted bundles, those customers would also lose all the consumer protections written into the law for basic service only customers.

## **DISCUSSION OF OTHER CONCERNS**

### **A. Deregulation of Basic Service with Insufficient Demonstration of Competition**

The provision for raising basic service rates, which mostly affects elderly and low-income consumers, remains troublesome. The proposed amendment to the bill would allow telephone companies to raise basic service rates in a telephone exchange with a showing of only two alternative providers serving some portion of the exchange,

even if the alternative provider has only one customer in the exchange. The current standard for demonstrating competition, which was adopted by the Public Utilities Commission of Ohio (PUCO) and upheld by the Supreme Court of Ohio, requires a showing of at least five alternative providers in the same exchange.

The OCC believes the PUCO standard should be kept intact. Although there is no guarantee that consumers will be able to switch to a provider that offers service comparable to the ILEC's basic service, having five providers as the standard importantly increases the likelihood that customers will have **some** choice for their telephone service.

In addition, the amended bill hinders public participation in the process for raising basic service rates. Under the current language, an application to allow rate increases would be automatically approved if the PUCO does not act on it within 30 days after it is filed. This is far too little time to allow for meaningful public participation. Consumers who will face a rate increase for their basic service should be given an opportunity to find out more about the alleged alternative telephone providers and challenge the application.

Under the PUCO's rules, the public now has 45 days to file objections to an application to increase rates for basic service. The application is automatically approved if the PUCO does not act on it within 120 days. This standard should be included in the legislation.

In addition, the legislation still allows annual rate increases of \$1.25 indefinitely. The amendment merely removes the words "\$1.25 per month allowed increase" from the legislation – replacing them with a reference to a to-be-repealed PUCO rule that allows exactly that amount of increase. This is NOT an improvement to the bill. If \$1.25 monthly increases are what the House intends to be allowed, the legislation should say so. In years to come, anyone looking at the statute will have a hard time figuring out exactly what the allowable increase is. This does not uphold transparency or aid public understanding of what this General Assembly has decided to enact. If the intention was to protect consumers from annual rate increases, this proposed amendment does not do it.

Much of the discussion about HB 276 has been about Ohio's need to attract and expand economic development. The proponents of this legislation have made economic development a focal point of their arguments in support of the complete deregulation of the telecommunications industry in our state. While we understand the desire for

economic development, we continue to ask, *what economic development?* We have yet to see specific economic development plans or even goals included in this legislation. All of the examples given about recent job creation developments have nothing to do with basic landline telephone service. They have to do with the entities, such as wireless companies, that are at one moment the ILEC's affiliate and at the next, their competitor. Economic development plans by ILEC affiliates are implemented to compete with the ILEC and are funded by the competitive affiliate and not the ILEC. Where are the ILEC economic development plans that are of such a beneficial nature that they are so worthy of attainment as to make it a fair trade for permanently eradicating decades of consumer protections?

## **CONCLUSION**

On behalf of Ohio's residential telephone consumers, I urge the Committee to make the changes to the amended bill that I have discussed here today or reject this legislation. The OCC's three proposed amendments address fundamental rights for residential telephone consumers. The carrier of last resort provision that protects consumers' right to service; the consumer protection provisions that protect consumers' right to quality service; and the Lifeline provisions that protect the right of low-income consumers to have affordable service.

Without the adoption of these key amendments to HB 276 I predict that the economic viability of the state will in fact suffer from the effects of weakened consumer protections. In addition, we urge you to re-consider the competitive test amendment and require the telephone companies to provide a real, concrete economic development plan for Ohio.

Thank you for this opportunity to present the residential consumer viewpoint. And thank you again for proposing consumer protection amendments to this bill. In particular, we look forward to the launch of statewide free voicemail for Ohioans in distress. This has proved a valuable service in specific areas throughout the state and will now benefit many more Ohioans. At this time, I am available to answer questions.



**ATTACHMENT A**

**OHIO CONSUMER PROTECTION SUMMIT  
CONSUMER COMPLAINTS REACH RECORD HIGHS IN 2009**



# CONSUMER COMPLAINTS REACH RECORD HIGHS IN 2009

About \$2.8 million was returned in 2009 to consumers who filed complaints and took advantage of the office's free informal dispute resolution to get restitution or relief.

Top 10  
complaint categories:



