Before the Senate Energy & Public Utilities Committee

Opponent Testimony Regarding Senate Bill 271
Presented by:
Bruce J. Weston, Interim Consumers' Counsel

January 25, 2012

Good morning Chairman Daniels, Vice Chair Balderson, Ranking Member Schiavoni, and Committee members. I am Bruce Weston, the Interim Consumers' Counsel for the Office of the Ohio Consumers' Counsel (OCC). Thank you for allowing me to appear before you today to discuss the as-introduced version of Senate Bill 271 (SB 271) and the impact that the bill may have on Ohio's residential utility customers. As you know, OCC is the statutory representative of Ohio's residential utility consumers, and regularly appears before the Public Utilities Commission of Ohio (PUCO) on consumers' behalf.

We are evaluating the bill and will be formulating more specific recommendations in the next couple weeks. I thank Chairman Daniels and Senator LaRose, the bill's sponsor, for providing us the opportunity to work with them regarding our proposals for consumer protections. Today, we are taking this opportunity to share our concerns. Overall, the bill is too much too soon. And the bill is a solution for a problem that the Legislature already solved.

The General Assembly Should Await the Report of the SB 162 Select Committee

A little over one year ago, a new telecommunications bill, Substitute Senate Bill 162 (SB 162) of the 128th General Assembly, went into effect. SB 162, among other things, granted telephone companies increased pricing flexibility for their regulated telephone services and loosened but maintained service quality standards.

In the General Assembly's wisdom, SB 162 was forward-looking in a number of respects. For one matter, you created the Select Committee on Telecommunications Regulatory Reform ("Committee"), to report on the impact of SB 162:

> (D) The Committee shall study the impacts of S.B. 162 as enacted by the 128th General Assembly. The Committee's study shall include, but shall not be limited to, a review of both the economic benefits of the act and the act's impact on jobs, telephone company rates, telephone company quality of service, lifeline program customers, rural markets, rural broadband deployment, and carrier access to private property…;
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> (F) Not later than four years after [September 13, 2010], the Committee shall submit a written report of its findings and recommendations to the General Assembly and the Governor. Upon submission of its report, the Committee shall cease to exist. (SB 162, Section 5)

The Committee's report to the General Assembly and the Governor is due in 2014. Because SB 162 was such a major change of telephone regulations in Ohio, its impact should be reviewed before making further changes to these laws. The new legislation, SB 271, reopens the subject without the benefit of the review process that the Legislature envisioned.

SB 162 Fixed the Carrier-of-Last-Resort Issue by Giving the PUCO Discretion

Another way the General Assembly was forward-looking in SB 162 (in Ohio Revised Code 4927.11(C)) was by providing an opportunity for telephone companies to justify a waiver of their responsibility to serve consumers as a carrier of last resort (COLR), subject to the PUCO's discretion to judge the outcome. For that waiver process, it is commendable that SB 162 required due process for both the telephone company and its customers. That fair process was achieved through important customer protections for considering an end to the carrier of last resort. Those protections included a public interest standard, the identification of all the affected customers, the identification of alternative telephone service providers, the opportunity for comment and a local public hearing, among other requirements. In fact, certain witnesses testifying for the industry on SB 162 supported the bill's approach to the carrier of last resort.[1]

[1] For example, see the testimony of CenturyTel (Oct. 6, 2009, p. 1 (unpaginated)) and the Ohio Telecommunications Association (Oct. 6, 2009, p. 8 (unpaginated)).

Also, the PUCO promulgated rules to implement the waiver process in SB 162 for carrier of last resort. You can see the carrier-of-last-resort waiver process from SB 162 in SB 271 at page 9, starting on line 241.

The carrier of last resort consumer protection helps to ensure that Ohioans have access to reliable and affordable telephone service. Ohioans currently can purchase unlimited local calling at a flat rate from telephone companies, with rates that are subject to limits on increases. This service is also known as Basic Local Exchange Service or BLES. SB 271 undoes the protections of SB 162 by allowing the removal of these key consumer protections. It does this by minimizing the PUCO's discretion to protect Ohioans against a premature end to the carrier-of-last-resort obligation. Therefore, the bill should be amended to restore the PUCO's discretion in Ohio Revised Code 4927.11(C), for resolving carrier-of-last-resort issues.

In an age of smartphones and tablets, does the carrier of last resort still matter? For many Ohioans, it does. While regulated landline telephone use is decreasing, a significant number of Ohioans still rely on this service. Data from June 2010 showed that approximately three-quarters of Ohio adults over 18 lived in households with landlines.[2] To no surprise, national data suggests that adults aged 65 and older relied on landline telephone service the most out of any age group. Data from the first six months of 2011 show that about 91% of adults aged 65 years and over were living in households with landline telephones.[3]

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[2] Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics; Nadarajasundaram Ganesh, Ph.D., and Michael E. Davern, Ph.D., NORC at the University of Chicago; and Michel H. Boudreaux, M.S., and Karen Soderberg, M.S., State Health Access Data Assistance Center, University of Minnesota, *Wireless Substitution: State-Level Estimates From the National Health Interview Survey, January 2007-June 2010,* National Health Statistics Reports, Number 39, April 20, 2011, at 8. (Available at: http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf)

[3] Note that these homes may also include wireless services in addition to the landline service. Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2011*, rel. December 21, 2011, at 8.

Federal Regulations and Other States

There is another aspect to this bill being too much too soon. It appears that federal regulations in place today may restrict or, in some cases, prohibit telephone companies from withdrawing their regulated basic telephone service. These federal regulations relate to the Lifeline program for low-income customers. Telephone companies that accept federal universal service funds for Lifeline programs must maintain basic service to qualify for the funding.

OCC is reviewing the experiences in other states that have considered removing carrier-of-last-resort obligations. Some states have enacted legislation to allow telephone companies to withdraw their carrier-of-last-resort obligation. But it appears that telephone companies have not acted on this flexibility in other states – which may be a result of the federal regulations. We are continuing to review the status of other states. However, it appears that there may be little actual experience elsewhere. This brings us again to emphasize the importance of awaiting the report from the Select Committee that was arranged in SB 162.

The Competitive Test May Not Protect Consumers

Senate Bill 271 expands the ability of local telephone companies to withdraw from their carrier-of-last-resort obligations. Traditionally in Ohio, carrier-of-last-resort responsibilities have required telephone companies to provide, at a minimum, reliable basic telephone service to customers in their service area. Basic telephone service includes unlimited local calling at a flat rate.

If passed, SB 271 would give some telephone companies the ability to withdraw or retire their telephone services from any area even though some customers may not have a viable alternative. In order for a telephone company to be considered exempt from its carrier-of-last-resort obligations, SB 271 requires the company to show that its service territory is "fully competitive." However, the test to show if an area is competitive is too weak. The test was not designed for the purpose of allowing the withdrawal of a carrier of last resort.

To prove that full competition exists, a telephone company would merely need to demonstrate that two competing telecommunications services are available **somewhere** in each of its

telephone exchanges. But for something as serious as ending the carrier of last resort, the telephone company should have to show that alternative services are available to customers **everywhere** throughout the exchange. The state's competitive test, as codified in SB 162, was developed to determine whether a telephone company should have increased pricing flexibility. This test was not intended for determining a company's carrier-of-last-resort obligation. Therefore, the bill should be amended to include a fair test to match competitive telephone services to where Ohioans actually live.

I have attached to my testimony two maps. First is a multi-color map of each of the incumbent telephone companies' exchange areas. This map is available on the PUCO's website. The second map is our mark-up of the first map to explain the impact of this legislation. We've highlighted the service territories of AT&T, Cincinnati Bell, CenturyTel and Conneaut. These four telephone companies currently meet the "fully competitive" standard in SB 271. That means all the exchanges in their service territories have been deemed competitive. Under this bill, the highlighted areas—meaning Ohioans living in those areas—may no longer have a carrier of last resort.

The marked-up map shows the broad-brush approach of using the existing competitive test. While Ohioans living in the urban and suburban areas of each exchange may benefit from competing telecommunication services, their neighbors in the surrounding rural areas may not have these alternatives.

One way to strengthen the competitive test would be to require a showing that more telephone providers are serving customers **everywhere** in an exchange with reliable options that are comparably priced to the existing company's service. Another way to protect consumers is to grandfather their basic telephone service for as long as they choose to keep it. Regarding new housing developments, the telephone companies could be given regulatory flexibility in building out their networks.

Some Consumers May Lose Access to Affordable Telephone Service

Consumers who subscribe to basic service may do so largely because they cannot afford, or do not need, anything beyond basic landline telephone service. Under SB 271, a telephone company deemed to be "fully competitive" may choose to stop providing basic service. Thus, basic service customers may have to switch to an unregulated service offered by the same company or to another provider if available. Either of these options would likely mean that the consumer may pay more – maybe a lot more – for telephone service.

In the event a customer is left without service, SB 271 requires the PUCO to establish a process whereby consumers will have access to a comparable service. But the bill does not ensure that the replacement service will be of comparable price, features, and quality. Losing access to affordable telephone service would be a detriment to Ohio's consumers, especially at a time when many Ohioans are struggling to make ends meet.

While OCC will develop additional proposals for protecting customers, fixing the bill's process for a safety net is not an adequate solution for the our other concerns in the legislation. As stated, our concerns include there being a major change in Ohio before the Committee report from SB 162 is considered and allowing telephone companies to abandon their regulated basic telephone service for customers based on an inadequate test for competition.

Losing Customer Protections for Service Quality

The bill removes the companies' present obligations to meet service quality standards for basic service. These service quality standards include protections for customers from lengthy service outages, unreasonable bill payment timelines and customer credits, among other things. The bill should be amended to maintain minimum standards so that customers have reliable access to telephone services, especially in the event of an emergency.

Maintaining minimum service quality standards was a key consumer protection that was preserved in SB 162. References were made in industry testimony during the process of SB 162,

to note that the bill preserved consumer protections.[4] Various of those standards were the result of amendments where the Legislature accepted compromise language to protect consumers. Those consumer protections should not now be lost, just 16 months after the effective date of SB 162.

Conclusion

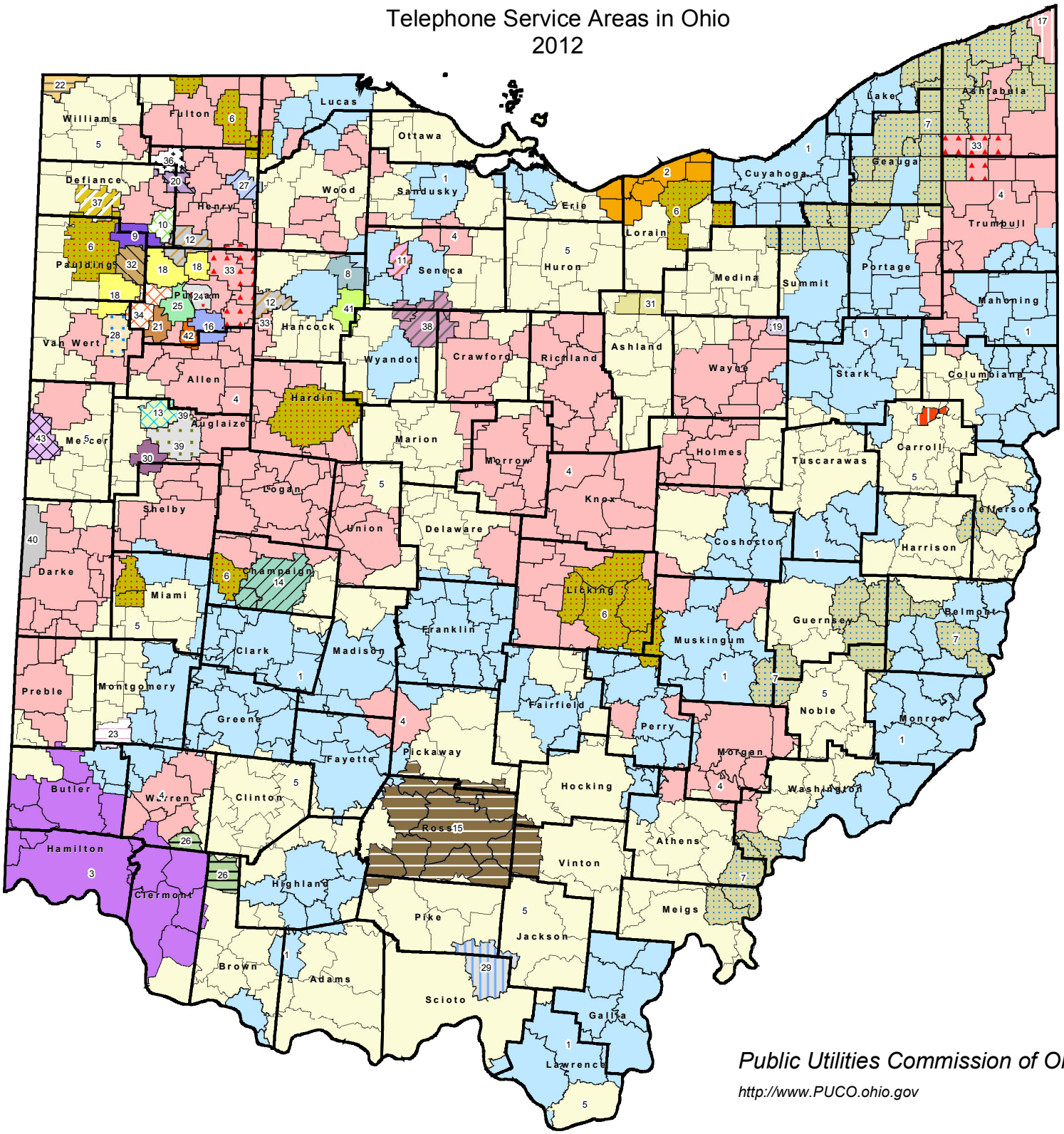
OCC has identified concerns for protecting Ohio's telephone consumers. In sum, this legislation goes too far too soon. The Select Committee created in SB 162 to evaluate the impact of that bill and provide a report was a good idea that should be fulfilled before enacting this legislation.

Moreover, the General Assembly already provided a solution for the carrier-of-last-resort issue. That solution is the waiver process that was enacted in SB 162 (which can be seen in SB 271 on lines 241-268). The existing waiver process of SB 162 is better for consumers than the process proposed in SB 271 whereby telephone companies can use a weak test for competition to withdraw regulated basic telephone service for customers.

Thank you for your consideration. Of course, OCC's staff and I are available to assist you.

[4] For example, consumer protections such as service quality were noted in the testimony of the Ohio Telecommunications Association (Oct. 6, 2009, p.1, 8 (unpaginated)) and in the testimony of CenturyTel (Oct. 6, 2009, p. 1 (unpaginated)).

Telephone Service Areas in Ohio
2012



Public Utilities Commission of Ohio

http://www.PUCO.ohio.gov

Large Incumbent LECs

- (1) AT&T Ohio
- (2) CenturyTel (d/b/a CenturyLink)
- (3) Cincinnati Bell
- (4) UTO (d/b/a CenturyLink)
- (5) Frontier North
- (6) Windstream Ohio
- (7) Windstream Western Reserve

Small Incumbent LECs

- (8) Arcadia (TDS)
- (9) Arthur Mutual
- (10) Ayersville
- (11) Bascom Mutual
- (12) Benton Ridge
- (13) Buckland
- (14) Champaign
- (15) Chillicothe
- (16) Columbus Grove
- (17) Conneaut
- (18) Continental (TDS)
- (19) Doylestown
- (20) Farmers Mutual
- (21) Fort Jennings
- (22) Frontier
- (23) Germantown
- (24) Glandorf
- (25) Kalida
- (26) Little Miami (TDS)
- (27) McClure
- (28) Middle Point Home
- (29) Minford
- (30) New Knoxville
- (31) Nova
- (32) Oakwood (TDS)
- (33) Orwell
- (34) Ottoville Mutual
- (35) Pattersonville
- (36) Ridgeville
- (37) Sherwood Mutual
- (38) Sycamore
- (39) Telephone Service
- (40) United of Indiana
- (41) Vanlue (TDS)
- (42) Vaughnsville
- (43) Wabash Mutual

Telephone Service Areas in Ohio
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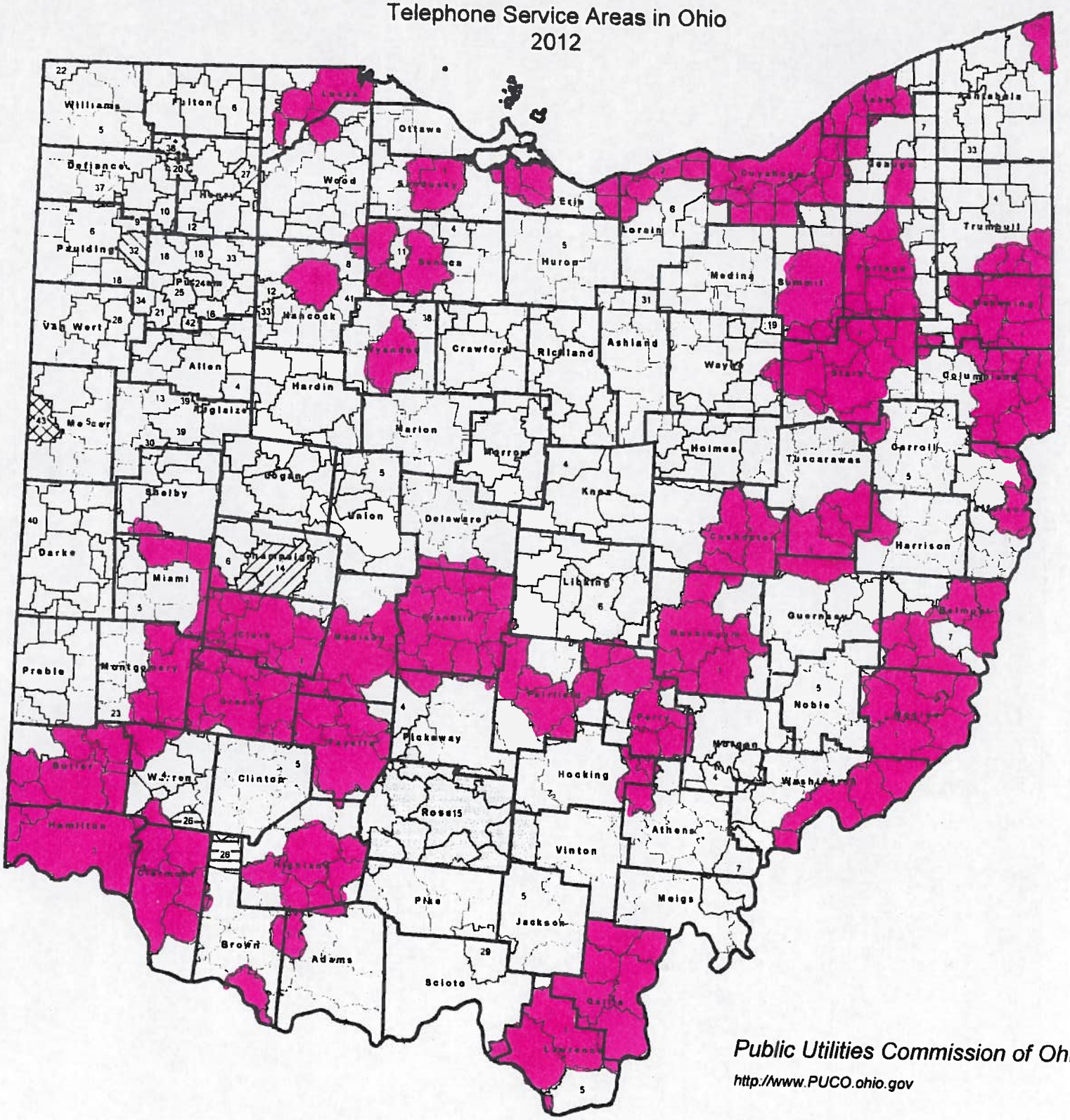

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