



**Before
The Ohio House
Public Utilities Committee**

**Testimony on Substitute House Bill 402
by
Terry Etter**

**On Behalf of the
Office of the Ohio Consumers' Counsel**

February 20, 2018

Hello Chair Cupp, Vice-Chair Carfagna, Ranking Member Ashford, and members of the Committee.

Thank you for the opportunity to testify regarding this legislation that can raise the price and lower the service quality of Ohioans' basic wireline telephone service.

My name is Terry Etter. I have served the public as an attorney on telephone issues for the Ohio Consumers' Counsel ("OCC") since 1997. This testimony explains the Consumers' Counsel's opposition to the Substitute version of House Bill 402 that was accepted by the Committee on February 13, 2018. Previously I testified with a recommendation to protect Ohio consumers by not enacting the as-introduced version of House Bill 402. Since then, three groups providing services to Ohio consumers – Southeastern Ohio Legal Services, Pro Seniors and the Ohio Poverty Law Center – have testified with their concerns about this legislation. And I understand that one or more additional consumer groups will have testimony today to recommend that the legislation not be enacted.

The Substitute Bill still contains provisions regarding pricing of basic telephone service, service quality, and other aspects of telephone service that can harm consumers. Thus, OCC recommends that the Substitute Bill not be enacted.

The Substitute Bill has many of the provisions of the original Bill that could harm consumers. There is the highly problematic provision that can give telephone companies the sole discretion, once the Public Utilities Commission of Ohio (“PUCO”) determines that there are at least two alternatives somewhere in the community, to raise the rates consumers pay for basic service by as much as 20 percent. (Lines 458-459.) Note that the PUCO has already made this determination for some companies, such as for consumers of AT&T Ohio. Many basic service customers are elderly (on fixed incomes) or are low-income consumers who subscribe to the telephone companies’ discounted Lifeline service. A 20 percent increase in the price of their telephone service could worsen their already-fragile financial situation.

My January 30 testimony included a chart that showed the potential impact of annual 20 percent increases on AT&T Ohio’s basic service customers. In subsequent testimony, AT&T Ohio said that the \$30 AT&T monthly basic service charge (that OCC used as a starting point in the chart) included add-on charges not subject to the 20 percent increase in the legislation, with \$23 being the basic charge. In any event, my point then and now is that the legislation’s enabling of potential 20 percent annual increases in Ohioans’ basic phone service is excessive and bad for Ohio consumers. The math is that 20 percent annual increases in a telephone company’s monthly basic service rate, if implemented, would more than double the monthly rate after four years of such increases, regardless of the starting point for the rate. Such increases in consumers’ monthly bills are much higher than the flexibility already allowed by the legislature for annual increases of \$1.25 on monthly bills.

Such an increase could result in some consumers having to make tough choices between paying for phone service or paying for other essentials. And while the telephone companies claim that the market would restrain their price increases, that hasn't happened under the current law. Nearly all of Ohio's major telephone companies that have the pricing flexibility available under the current law have increased their rates by the maximum every year.

The 20 percent annual increase allowed under the Substitute Bill is not based on any need identified by the telephone companies. Rather, telephone companies asserted that the increase is related to spurring investment in telecommunications services other than basic service, such as broadband and cell phone facilities. But the Substitute Bill does not require the telephone companies to make *any* investment in Ohio in exchange for increasing basic service rates that consumers pay. Any investment in Ohio would be based on corporate planning for infrastructure investments – the same as it currently is.

Another problem is the test that telephone companies must meet to raise monthly basic service rates (by 20 percent annually) does not guarantee that customers would have alternatives to their telephone company's basic service. The test requires only that two alternative providers be available *somewhere* within the community. Some consumers may have two (or more) alternatives, others may have one, while some other consumers may have no alternatives. And, the alternative test does not take the price of any competitive alternatives into consideration, which means that the alternatives could also be unaffordable for many consumers. And note that some companies, such as AT&T Ohio, have already been determined by the PUCO to have met the test, meaning the company would have the discretion to raise basic service rates by 20 percent under the legislation.

The Substitute Bill just does not protect basic service customers from excessive price increases in the amount they must pay for phone service. It does not assure that they have affordable alternatives

available. And it does not require telephone companies to invest in Ohio in exchange for being able to increase basic service rates by as much as 20 percent annually.

The Substitute Bill would also eliminate important service quality protections for consumers, in various ways. For one, the legislation would still eliminate the policy requirement for “adequate” service in R.C. 4927.02(A)(1) that “Ensure[s] the availability of adequate basic local exchange service or voice service to citizens throughout the state.” (Lines 368-369.) That would be a bad change for Ohioans. For another, the bright-line service quality standards for basic service in R.C. 4927.08 would also be eliminated. (Lines 575-578.) These are bare-bones, common-sense consumer protections regarding installation, billing, and repair of basic service. The Ohio General Assembly appropriately found these consumer protections important to retain for Ohioans after prior deregulatory legislation resulted in elimination of most of the other minimum telephone service standards. For example, the remaining standards require basic service to be installed within five business days. Customers receive a month’s credit if their basic service is out more than three days. Customers must be allowed at least 14 days to pay their bill after it is issued. That would change under the Substitute Bill.

If this legislation is passed, what would be left are two complaint statutes. One is R.C. 4927.06, which prohibits unfair or deceptive acts or practices by telephone companies. But “unfair” or “deceptive” practices are standards that are more helpful to consumers disputing inappropriate telephone company marketing; these standards are not well suited for protecting consumers against inadequate service quality. And it can be expected that telephone company lawyers would take advantage of this wording, to the detriment of consumers who file complaints about service quality.

The other statute that would remain if this legislation is enacted is R.C. 4927.21. This statute allows customers to file a complaint at the PUCO if they believe a telephone company’s rate, service, or

practice is unjust, unreasonable, unjustly discriminatory, or otherwise violates Ohio law. Here again, consumers would be at a distinct disadvantage in their complaints about telephone service, with only generalized terms like “unjust” and “unreasonable” to rely upon instead of the specific (even though minimal) standards that the General Assembly has established to date.

Under this legislation, consumers with service quality complaints would be at a distinct disadvantage in the regulatory process to the telephone companies (or would be at an even greater disadvantage than their current situation). Consumers might not have the wherewithal to personally represent themselves against the telephone company’s lawyers. So, they might need to hire their own attorney if they have the money – even if the dispute involves little or no money. Further, formal complaints at the PUCO may take many months to be resolved. And the odds of consumers succeeding can be difficult.¹ For many consumers, the time, effort, difficulty, and expense involved in the complaint process might be too much for them to bring a complaint for solving their issue.

In addition, eliminating the existing statutory standards that help consumers in filing formal complaints about service problems also would work against consumers who make informal complaints by calling the PUCO. Eliminating the service standards would reduce the leverage of the PUCO and consumers toward successfully resolving informal complaints with telephone companies about service problems.

Another disadvantage for consumers with service quality issues is that the legislation would make treble damages inapplicable to telephone companies. (Lines 365-366.) The mere possibility of a telephone company having to pay treble damages for violating a PUCO order serves as a deterrent to telephone companies from providing inadequate service – and encourages telephone companies to resolve issues informally without litigation. In order to protect consumers, the legislature should

¹ “Ohio consumers face difficulties filing complaints against utilities,” Columbus *Dispatch* (May 10, 2015), available at <http://www.dispatch.com/content/stories/local/2015/05/10/consumers-vs--utilities.html>.

retain Ohio's service quality standards and the treble damages provision in Ohio law, and not enact this legislation.

The Substitute Bill also includes the original Bill's limitation on the PUCO's authority to inspect a telephone company's facilities unless there is a consumer complaint regarding basic service that implicates the particular facility to be inspected. (Lines 565-574.) This would hinder the PUCO's ability to act proactively on its own initiative to ensure that telephone company facilities are operating properly for the public.

OCC appreciates what are some improvements in the Substitute Bill compared to the as-introduced Bill. However, for the consumer protection reasons discussed in this testimony and in my testimony of January 30, 2018, the Substitute Bill should not be enacted.

Again, thank you for the opportunity to testify regarding Substitute House Bill 402 and its impact on Ohioans.