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Before the Senate Finance Workforce Subcommittee - Opponent Testimony
on Telecommunications Provisions of House Bill 64

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Chairman Beagle, Vice Chairman Sawyer, and Subcommittee members:

My name is Michael Smalz. I am a Senior Attorney with the Ohio Poverty Law Center (OPLC). OPLC is a nonprofit statewide legal aid office whose mission is to advocate for and protect the legal rights of low-income Ohioans. I am testifying on behalf of OPLC and the Appalachian Peace and Justice Network (APJN). APJN is an Athens County-based community social justice organization including over 200 largely low-income residents of southeastern Ohio. I have represented APJN in various cases before the Public Utilities Commission of Ohio (PUCO) and currently serve as a member of the PUCO Statewide Telephone Lifeline Advisory Board.

We oppose the telecommunications provisions in the budget bill (HB 64), which would allow AT&T and other major telephone companies to withdraw their basic landline service to Ohio telephone customers. These provisions are both unnecessary and harmful to Ohio consumers, especially low-income, rural and elderly Ohioans.

FIRST, these provisions are unnecessary because there is already a legal process for the telephone companies (“incumbent local exchange carriers” or “ILECs”) to apply for and obtain a waiver allowing them to withdraw basic local exchange service (BLES). It is set forth in R.C. 4927.11(C) and Ohio Admin. Code 4901:1-6-27(G).

Current law provides a fast-track mechanism for a phone company to obtain PUCO approval to terminate its BLES service. The Commission must issue an order granting or denying the company’s requested waiver within 120 days of the filing of the company’s application. The Commission must grant the company’s requested waiver if it finds the waiver to be just, reasonable, and not contrary to the public interest, and that the applicant

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demonstrates a financial or technical hardship.

Thus, the Commission, as a neutral and expert arbiter, can examine the factual merits of a company's waiver request and can evaluate whether there are adequate alternatives. Ohioans now depend upon the PUCO for protection from exorbitant telephone bills and poor service quality, and HB 64 would eliminate those protections.

SECOND, the ILECs are still highly profitable, are not losing money on BLES, and BLES is not being subsidized by other services. Moreover, there are other services – including call waiting, caller ID, intercarrier services, and internet services - which use the same local loop infrastructure used by basic local service. The companies providing basic phone service also receive revenues and profits from these services

THIRD, the enactment of the telecom provisions in HB 64 would jeopardize the availability of discounted rate Lifeline service for low-income landline customers. Under current FCC regulations, ILECs must offer basic telephone service to qualify for the funding. Low-income elderly customers are disproportionately dependent on Lifeline landline service.

State law governing the operation of the Lifeline program also conflicts with the provisions of HB 64. R.C. 4927.13(A)(1) requires that an ILEC that is a Lifeline provider shall offer flat-rate, monthly, primary access line service at a discount to the “monthly basic local exchange service rate” that provides for the maximum contribution of federally available assistance. However, if there is no “basic local exchange service,” the companies can no longer apply the discount. HB 64 does not spell out how to resolve this conflict.

FOURTH, some consumers will be losers. In some rural areas there is no reliable cellphone or broadband service. In addition, the companies would no longer have to furnish service to customers on a non-discriminatory basis. Customers with basic local service would lose the quality of service standards, including protections from lengthy service outages and related bill credits, limits on security deposit payments, and pre-disconnection notice requirements, while remaining totally exempt from the Consumer Sales Practices Act (CSPA). Even worse, many customers will lose access to comparable quality, affordable phone service, e.g. access to flat rate unlimited local phone service, free 411 service, and more reliable 911 service. Phone service is a necessity. It is essential to communicating not only with one's family, friends, medical and social

service providers, and law enforcement, but many government administrative hearings and legal consultations (including legal aid intake and client interviews) are now conducted by phone. Loss of basic telephone service will leave people without adequate and affordable telephone service. Elderly, low income and rural customers are especially vulnerable.

HB 64 would allow an individual customer of a phone company to file a petition with the PUCO objecting to the termination of their BLES service for the reason that they do not have “alternative reasonable and comparatively priced voice service.” Although this is an improvement over previous legislation, it is still insufficient.

The burden is placed upon the consumer, not the company, to establish that reasonable and comparatively priced alternative service is unavailable. The notice may be buried in the fine print of a bill insert or on the back of the bill. The customer may or may not receive the notice, may or may not read it, or may or may not understand it. The customer must act within 30 days after the notice is provided to the customer. During that short time window, the customer must research alternatives to their existing phone service: evaluate those alternatives based on pricing terms, quality of service, and other criteria; determine whether any alternative service is “reasonable and comparatively priced; obtain legal advice or representation; and then file a legal petition with the PUCO. This would be an especially daunting challenge for elderly, low-income, disabled, and less educated customers.

Furthermore, HB 64 does not require the availability of alternative service that is of comparable service quality, is as reliable as BLES service, or meets the specific needs of current BLES customers. There are many examples of situations where alternative service, even if comparatively priced, is not comparable in service quality to BLES service.

In the first place, BLES and “voice service” are not the same thing. Three key elements of BLES are missing from voice service: (1) access to telecommunications relay services for the deaf; (2) Caller ID blocking on a per-call basis, which is often an essential service for victims of domestic violence or stalking and domestic violence shelters; and (3) access to operators and directory assistance, which benefit the elderly and those who lack internet access. On the other hand, voice service provided through IP networks normally requires the purchase of a bundled package of services, and many low-income or elderly customers do not want or need, or cannot afford to purchase, higher-priced service

bundles.

In addition, the operation of certain medical devices and security systems depends on the operation of landline phones, and wireless alternatives may be prohibitively expensive. This is a question of customers' health and safety. Even Medicaid and access to health care are affected. CareSource and other Medicaid MCO's in Ohio are already complaining that they often have difficulty contacting patients who rely on cellphones because they have to change phones or run out of minutes on their limited minute cellphone plans. The complete abolition of basic landline service will no doubt exacerbate those problems.

The bottom line is that many customers who lose basic telephone service will end up in one of three situations: (1) with no phone service; (2) with inadequate phone service, or with (3) higher-priced and possibly unaffordable phone service, and in any case without the consumer protections now enjoyed by BLES customers. None of these outcomes are fair to the affected customers or serve the public interest.

FIFTH, these provisions are premature. The FCC has initiated an investigative and rulemaking process to address technology issues and transitions, including the possible retirement or selling of copper networks, 911 reliability and a wide range of other issues pertaining to possible further telecom deregulation. This legislation yields too much of Ohio's telephone policy making authority to federal regulators. Under HB 64, the right of the telephone companies to withdraw their basic local landline service is automatically triggered by the FCC's adoption of certain changes. Although the FCC's adoption of a new policy will be a significant development, Ohio should not default to the timing of a future FCC decision without knowing what that FCC policy will be or how it will impact the health and safety of rural, elderly, and low-income Ohioans.

Moreover, the proposed law requires the PUCO to adopt rules consistent with the FCC's rules on a timeline that that may expire before the FCC even issues its final rules. That makes no sense.

CONCLUSION. For all of these reasons, we urge the Senate to remove the telephone-related provisions in HB 64. We agree with the Ohio Consumers' Counsel (OCC) that requiring PUCO approval for the companies to abandon service is a better approach than putting the burden on consumers to file a legal petition with the PUCO within a very short time window. Alternatively, we urge the Subcommittee to modify some of the

specific provisions to provide greater consumer protections.

1. Expand the time period for a BLES customer to file a petition objecting to the abandonment of their existing service from 30 days to 60 days.
2. As requested by OCC in their prior testimony to this subcommittee, allow the OCC to provide consumer assistance to individual consumers.
3. For those lines where the language says the PUCO “may order the carrier to provide reasonable and comparatively priced service to the customer at the customer’s residence,” “**may**” should be changed to “**shall**.”
4. For those lines where the term “reasonable and comparatively priced” is used, change that phrase to “reasonable, comparatively priced and comparatively suited to meet the customer’s needs,” or similar language.
5. Remove the exemption of telephone and telecommunications service from the coverage of the Ohio Consumer Sales Protection Act (CSPA), R.C. 1345.01(A).
6. Add “representatives of low-income and senior citizen organizations” to the list of participants in the PUCO collaborative.
7. Follow other states which have implemented stronger consumer protections in their landline deregulation statutes, such as Kentucky’s exemption of areas with fewer than 15,000 households and Michigan’s delayed effective date of 2017).
8. Give the PUCO the regulatory authority to regulate the content and format of the companies’ notices of termination of BLES service.
9. Require the landline telephone companies to furnish relevant data concerning their landline customers to the PUCO and/or the collaborative process.

These changes would be significant improvements. However, the better and more prudent course of action would be to remove the telecom deregulation provisions from the budget bill.

Thank you. I am happy to answer any questions.