

Before  
The Ohio House of Representatives  
Public Utilities Committee  
February 13, 2018

Testimony of Jon F. Kelly  
In Support of House Bill 402

1. Introduction

Mr. Chairman and Members of the Committee, I am Jon F. Kelly, outside counsel for AT&T here in Ohio. I have been an attorney in the telecom arena for 35 years, having previously served as Legislative Assistant to former Governor James A. Rhodes and then as the last Chairman of the PUCO in his Administration. I am here today to speak in support of H. B. 402.

2. Background on the Bill

The process of reforming Ohio's telecom laws to reflect the huge changes in the business began 30 years ago, in 1988, with H. B. 563, the first state law to recognize that the monopoly regulatory framework was no longer appropriate in the telecom industry.

In brief summary:

1988 – HB 563 – alternative regulation allowed for competitive services

2001 – SB 235 – redefined “basic local exchange service” and expanded alternative regulation

2002 – SB 255 – public utility access to municipal right-of-way clarified and expanded

2005 – HB 218 – allowed “basic local exchange service” to be subject to alternative regulation

2007 – SB 117 – statewide video regulation, supplanting most local regulation

2010 – SB 162 – major telecom reform

2015 – HB 64 – preparing for the internet-protocol (“IP”) transition and Carrier of Last Resort (“COLR”) relief

2016 – SB 331 – small cell deployment in municipal right-of-way

The 2010 reform (S.B. 162) is notable because it repealed 34 antiquated provisions of the law (including some that still referred to telegraphs), limited the application of 28 other provisions, and rescinded 44 PUCO rules.

House Bill 402 follows that theme but is significantly more modest. It would repeal only one section of current law and would update nine others.

### 3. Why the Bill Should Be Enacted

The bill covers three major areas.

- First, it expands on the 2010 reforms by providing additional pricing and regulatory flexibility for what once were monopoly services.
- Second, it conforms Ohio law and policy to changes at the federal level.
- Third, it makes “clean-up” changes left over from the last major reform effort.

The bill modernizes state policy and levels the playing field for all providers in response to explosive competition we’ve seen in the past decade.

When many of the current rules were written, companies like the OTA members were treated as monopolies. They no longer fit that monopoly, public utility model.

The OTA member companies have lost over 80% of their landline customers since 2000. These customers have, for the most part, migrated to services provided by cable companies, wireless and VoIP service providers, and other competitors. In the wireless arena, the devices now outnumber Ohioans by a count of 11.8 million devices to 11.4 million people.

This bill represents common sense business regulation, as it will bring state law up-to-date with today’s competitive marketplace and today’s technology.

It will also stimulate additional investment in Ohio and both preserve and create new jobs by reducing regulation. Money that Ohio's telecommunication providers spend on antiquated rules is money that cannot be reinvested on improving the telecommunications infrastructure and creating jobs. An improved telecommunications infrastructure will foster economic development opportunities and contribute a strategic advantage to the state. Outdated regulations are clearly a deadweight drag on our economy.

The Ohio telecom industry contributes \$4 billion per year to Ohio's economy. It is a \$23 billion industry that continues to grow. It employs more than 16,000 Ohioans.

Regulatory reform in Ohio is a great success story. In just one example, Senate Bill 117, enacted in 2007, resulted in the creation of hundreds of new jobs in Ohio. It also resulted in AT&T's U-Verse service and other offerings coming to Ohio, giving Ohioans a choice when it comes to television service and giving cable some needed competition.

This bill is the next logical step to maintain this trend. Excessive and imbalanced regulatory burdens placed on local phone companies create an unlevel playing field and inhibit greater investment in their networks. It is ironic that only the rapidly diminishing landline service is subject to these regulations – not the growing VoIP and wireless segments.

Public policy should create incentives - - not barricades - - in Ohio for these investments. The modest reforms proposed in this bill will go a long way toward accomplishing that goal for the entire telecom industry. Moreover, the state's telecom environment will become more attractive for investment, benefitting consumers and facilitating economic development as well.

#### 4. Follow-Up On Committee Questions

##### a. Basic Local Exchange Service (“BLES”) pricing

As Charley Moses testified, Ohio is the only Midwest state that continues rate regulation for basic services. The other states have modernized their regulatory regimes to recognize the obvious - - the telecommunications business is highly competitive. However, PUCO oversight would continue. The Commission would retain authority to review and sanction any rate, practice, or service that is unjust, unreasonable, unjustly discriminatory, or in violation of a statute or Commission rule under R. C. 4927.21.

b. BLES service quality

While the specific service quality requirements in R. C. 4927.08 would be repealed, no change is proposed to the telecom complaint statute, R. C. 4927.21, which gives the Commission broad powers to address any unjust or unreasonable, rate, service, or practice by a telephone company (whether subject to specific service standards or not). The complaint process is not affected by this bill.

Moreover, like pricing, the marketplace adequately controls service quality in this sector. Customers can and do “vote with their feet.” In fact, avoiding “customer churn” is one of the main goals of telecom managers. Let me repeat, they are not in business to lose customers.

c. Situations Where Little Competition Exists Today

Some concern was expressed about the few places where there may be little competition today. Given the industry’s investment and expansion, which will be furthered by this bill and others, this is likely a temporary circumstance and a problem that will solve itself. The extensive federal funding of the rural broadband build-out is an example here.

Let me note that the competitive test, adopted in S.B. 162 in 2010, is unchanged in this bill.

I can’t speak to the lake example cited by OCC, but I can say that we have over 90% of the exchanges in Ohio that have been found to have multiple alternative telecom providers. Due to this bill and other legislative activities in both this and previous General Assemblies - - small cell deployment legislation (HB 478) and broadband grant legislation (HB 281), to name two - - the services will continue to expand. The ever-evolving telecom marketplace will be improved with these legislative actions.

In addition, the COLR legislation enacted a safety net in the context of the withdrawal of BLES by an ILEC if an individual customer truly has no viable alternative service available. See R. C. 4927.10(B). The price of that service may go up, but a reasonable and comparatively priced voice service would be made available by the ILEC as long as the statutory conditions prevail.

d. Treble damages

This provision of Ohio law dates to 1913, and it was ill-conceived then. I expect the treble damages remedy was borrowed from the Sherman Antitrust Act, which was enacted a few years earlier. As noted in prior testimony, it’s rarely been invoked in Ohio, but its presence in the law

creates an unjust imbalance. I believe only one other state – Oregon – has a similar provision. In my own experience, the possibility that this remedy would be pursued led to settlements that were higher than they would otherwise have been. Customers who were simply looking to be made whole after, say, a billing error, had the treble damages “hammer” at their disposal. Or should I say, “Their lawyers had that hammer.” The provision should be repealed.

#### e. Telecom Mergers and Acquisitions

The goal of this amendment is to eliminate costly, wasteful, duplicate regulation at the state level. All of these transactions, in my view, are subject to FCC review and approval. Ohio is in the small minority of states that continues to exercise jurisdiction in this area. A patchwork quilt of telecom merger and acquisition requirements, along with various commitments that sometimes grow out of those, does not serve the public interest. Language has been drafted to ensure that there would be state authority if the FCC does not have authority or chooses not to exercise its authority over a particular transaction.

#### 5. Conclusion

Thank you for the opportunity to testify. We ask for your support for this legislation. I’d be pleased to answer your questions.