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**Before the House Finance and Appropriations Committee - Opponent**  
**Testimony on Telecommunications Provisions of House Bill 64**  
**Presented by: Michael R. Smalz, Ohio Poverty Law Center and**  
**Appalachian Peace and Justice Network (APJN)**  
**March 26, 2015**

Good afternoon, Chairman Smith, Vice Chairman Schuring, Ranking Member Driehaus, and Committee 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 organization including over 200 (largely low-income) residents of southeastern Ohio who advocate, inter alia, for fair rates and strong consumer protections for residential consumers in southeastern Ohio. I have represented APJN in various cases and rulemaking proceedings before the Public Utilities Commission of Ohio (PUCO). I am also 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

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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, upon investigation, it finds the waiver to be just, reasonable, and not contrary to the public interest, and that the applicant demonstrates a financial hardship or an "unusual technical limitation." 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 throughout the targeted phone exchanges.

Current law thus requires a telephone company to prove its proposal to the satisfaction of the PUCO. Ohioans depend upon the PUCO for protection from exorbitant utility bills and poor service quality. 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** In addition, companies that are serving rural, sparsely populated areas can access the federal Universal Service Fund subsidies for high-cost areas.

Moreover, there are other services which use the same local loop infrastructure used by basic local service. These include vertical services such as call waiting, caller ID, intercarrier services, and internet services. The companies providing basic phone service also receive revenues and generate profits from these services

**THIRD, the enactment of the telecom provisions in HB 64 could jeopardize the availability of discounted rate Lifeline service** for low-income landline customers. Under current FCC regulations, ILECs that accept federal universal service funds for Lifeline programs 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 lose.** 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. 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 agencies, but many government administrative hearings, meetings with social workers or counselors, and legal consultations (including legal aid intake and client interviews) are now conducted by phone. Loss of basic telephone service may leave people without adequate and affordable telephone service. Elderly, low income and rural customers are especially vulnerable.

HB 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; possibly obtain legal advice or representation; and then file a legal petition with the PUCO. This could prove to be an especially daunting challenge for elderly, low-income, disabled, and less educated customers.

Unlike the natural gas or electric industry, where the PUCO is required to publish an up-to-date "Apples to Apples" chart containing pertinent price information and key terms of service, there is no requirement in HB 64 for either the PUCO or the ILECS to provide that information to customers before their BLES service is terminated.

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 for 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 require 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. As previously noted, customers who move from BLES to an alternative service lose important consumer protections. At the same time, these customers would remain unprotected under the Ohio Consumer Sales Protection Act because of its longstanding exemption of public utility service.

There is an additional provision in HB 64 which requires the PUCO to establish a “collaborative process” to evaluate the availability of alternative voice service to current BLES customers. However, it is unclear whether and to what extent the collaborative process could identify and act proactively to protect vulnerable customers.

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 issued a Notice of Proposed Rulemaking (NPRM) to address Technology Transitions, including the solicitation of

comments on the possible retirement or selling of copper networks, 911 reliability and a wide range of other issues pertaining to possible further telecom deregulation. Ohio shouldn't jump the gun on allowing a telephone provider to retire its services when the FCC is investigating the impact of the deregulation trend nationally. AT& T cannot turn around and say, "the FCC is taking care of it so let us do what we want in Ohio."

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 federal agency decision without knowing what that FCC policy will be or how it will impact 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.** It is worth noting that counsel for AT&T, when testifying on a prior telecom deregulation bill, acknowledged the importance of retaining BLES by noting that BLES "provides a 'safety net' for consumers whose only need or desire is for plain old telephone service, provided by the telephone company that has served their community for 100 years." We should not abandon those customers.

For all of the reasons I have discussed, we urge this Committee to either remove the telephone-related provisions in HB 64 or modify them to afford greater consumer protections. 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 make them more consumer-friendly.

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. Expand the 120-day advance notice of termination of service period to 150 days.

3. As requested by OCC in their prior testimony to this subcommittee, allow the OCC to provide consumer assistance to individual consumers.
4. For those lines – 47681, 47695, 47699, and elsewhere 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.”
5. For those lines – at 47682, 47693, 47660-47661, 47659-47660, and 47667 - 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.
6. Remove the exemption of public utility service - or at least the exemption for telephone service – in the Ohio Consumer Sales Protection Act (CSPA), R.C. 1345.01(A).
7. Add “representatives of low-income and senior citizen organizations” to the list of mandatory participants in the PUCO collaborative.
8. 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).
9. Give the PUCO the regulatory authority to regulate the content and format of the companies’ notices of termination of BLES service.
10. 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.