



**Before
The Ohio House
Public Utilities Committee**

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

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

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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 impacts Ohioans as residential telephone consumers, especially with regard to 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. My testimony explains the Consumers' Counsel's opposition to House Bill 402, with a recommendation to not enact the bill. A backdrop to this legislation is that the telephone companies have obtained a number of significant deregulatory changes in Ohio law since 1989. This further legislation is not needed for telephone companies and is not good for Ohioans who use basic service.

Specifically, I will address four areas where the Bill is lacking consumer protection and could harm Ohio consumers. First, the Bill would allow incumbent telephone companies the sole discretion, without oversight, by the Public Utilities Commission of Ohio ("PUCO") to raise the rates consumers pay for basic service by 20 percent. (Lines 475-476.) Currently, telephone companies already have

been allowed by the General Assembly to raise monthly rates by \$1.25 per year.¹ And, this 20 percent increase could also apply to low-income consumers who subscribe to the telephone companies' discounted Lifeline service. (Lines 526-529.)

Second, the Bill would eliminate service quality standards for basic telephone service by repealing R.C. 4927.08. (See Bill Preamble.) This means that telephone companies would not be held accountable for inadequate service to Ohioans.

Third, the Bill would remove – as applicable to telephone companies – the longstanding penalty in law that makes utility companies liable for treble damages for such violations to their consumers as inadequate service. (Lines 401-402.) The ability of consumers to seek treble damages from a telephone company that violates a rule or order of the PUCO is an important disincentive for utilities to violate laws and rules intended for consumer protection.

And fourth, the Bill would reduce PUCO jurisdiction over two important areas – telephone company mergers and acquisitions (lines 303-390), and inspections of telephone companies' facilities (lines 580-588).

These proposals should be rejected to continue the minimal regulatory protections that consumers have left after years of deregulation.

“Basic service” is plain telephone service without a lot of extra features. It allows customers to call within their local community for a flat rate, and have access to long distance service. Many people still want this type of service for a variety of reasons. It's low-cost, so they have an affordable means of contacting their family, friends, doctors, and emergency services. They might not want or need features like caller ID, call waiting, call forwarding, or the numerous other features that telephone

¹ The \$1.25 cap was specified in former Ohio Adm. Code 4901:1-4-11, which is referenced in R.C. 4927.12(C)(1)(b). It is now found in Ohio Adm. Code 4901:1-6-14(C)(1)(a).

companies offer to consumers these days. These features add to the cost of the service, which means that – for these consumers – higher-priced bundled services are just not an adequate substitute for basic service.

By and large, basic service customers are often the elderly, who are on fixed incomes, or the poor, who are able to afford the service through discounts provided them from the federal Lifeline program. They can be harmed by the Bill's proposed increase in the amount that telephone companies may charge consumers for basic service.

As stated, Ohio law already allows wireline telephone companies that meet certain conditions (for service alternatives) to raise the monthly charge that customers pay for basic service by \$1.25 each year. The major telephone companies in Ohio have met these conditions, and have taken full advantage of the law by raising their basic service rates by the maximum every year. The telephone companies can raise rates because consumers lack effective choices from other providers for a service that is fashioned like basic service. Competitive providers just do not typically offer basic service to residential customers. Telephone companies do not need to “level the playing field” with competitors for offering basic service to consumers. When it comes to basic service, telephone companies generally have the field all to themselves.

Allowing telephone companies to increase their monthly charges to consumers of basic service by 20 percent would make it harder for elderly and poor Ohioans to afford telephone service. To get an idea how the Bill could affect basic service customers, let's look at the rates charged by Ohio's largest telephone company, AT&T Ohio.

According to AT&T Ohio's tariff on file at the PUCO, its customers already pay about \$30 per month for basic service. Presently AT&T Ohio can – and does – increase its monthly charge by \$1.25 per year by prior legislation giving companies this discretion. Under the Bill, the allowable

increase would be 20 percent, or about \$6 per month from its present amount. So instead of paying \$31.25 per month next year as is currently the case under Ohio law, basic service customers could pay \$36 per month next year. And the charge to customers under the Bill could increase incrementally by 20 percent each succeeding year. That is a bad result for the many Ohioans still on basic service. And it is a result that would allow the telephone companies, by design or effect, to drive consumers off of the basic service to other services that the telephone companies (not the consumers) prefer.

The following chart shows the potential effect on consumers of allowing a 20 percent increase in basic service rates over the next four years:

Year	Effect of current law on consumers			Potential effect of HB 402 on consumers		
	Initial monthly charge	Increase	New monthly charge	Initial monthly charge	20% Increase	New monthly charge
2018	\$30.00	\$1.25	\$31.25	\$30.00	\$6.00	\$36.00
2019	\$31.25	\$1.25	\$32.50	\$36.00	\$7.20	\$43.20
2020	\$32.50	\$1.25	\$33.75	\$43.20	\$8.64	\$51.84
2021	\$35.00	\$1.25	\$36.25	\$51.84	\$10.37	\$62.21

Thus, the basic telephone service charge to customers could more than double in four years.

The Bill can increase the challenge many elderly and low-income consumers have for paying for (and sometimes choosing between) phone service or paying for other essentials, such as heat, electricity, food, clothing, and medicines. Ohioans should not have to make that choice. Attached to this testimony are documents showing the challenges of Ohioans with food insecurity and poverty.

And while the telephone industry told this Committee last week that they are not interested in losing customers, price increases such as those allowed in the Bill could have that effect. That result would be to the detriment of consumers whose telephone service is a vital link to loved ones, emergency services, and job opportunities.²

Adding to the Bill's adverse effect on consumers is the elimination of the service quality standards for basic service in R.C. 4927.08. The law currently provides bare-bones consumer protections for installation, billing, and repair of basic service – which is the result of prior deregulatory legislation that the telephone companies sought and obtained. What remains are common-sense consumer protections to have in the law, such as installing service within five business days, giving customers at least two weeks to pay their bill, and crediting customers if their phone service isn't repaired within three business days. In this regard, we believe the existence of the minimal consumer protections that remain can help with resolving service quality problems, such as when a Representative contacted OCC and others to assist multiple constituents with service problems from their telephone company.

And these current consumer protections only apply to basic telephone service. Consumers of bundled telephone service have only whatever rights are granted them under their telephone company's customer agreement, again the result of prior deregulatory legislation.

It is surprising and unfortunate for consumers that the Bill would eliminate the state legislative policy in R.C. 4927.02 (A)(1) that telephone companies must provide adequate basic service to Ohioans. (Lines 404-405.) Bad idea. Instead, telephone companies would merely be required under the Bill to make available “voice service” – which is different from the no-frills basic service – without even a requirement that the service be “adequate” for consumers' needs.

² It should also be noted that AT&T has proposed to stop providing the discounted Lifeline service to more than 10,000 low-income customers in Ohio. See PUCO Case No. 17-1948-TP-UNC.

The Bill would also make it a state policy to completely rely on market forces “to determine the availability, prices, terms, and other conditions of providing voice services.” (Lines 434-435.) Ohio is not there yet with competition for this particular service, basic telephone service, for Ohioans, so the change would leave these consumers unprotected. This change should not be made.

That brings up the next point: remedies for consumers who have experienced poor service quality from their telephone company. Under current law, basic service customers have specific protections regarding service quality. These protections are plain and unambiguous, and damages are clearly determinable in complaint cases at the PUCO. But those would go away under the Bill, as I discussed earlier.

That would leave basic service customers with the same basis for a PUCO complaint as customers of bundled service have. Under R.C. 4927.06 they would have to show that the telephone company committed an unfair or deceptive act or practice. This language – which was supported by the telephone industry in 2010 – is similar to the language of the Ohio Consumer Sales Practices Act (“CSPA”).

But unlike with the Consumer Sales Practices Act, the Bill would not allow consumers who are the victims of a telephone company’s unfair or deceptive practice from recovering treble damages – which has long been protection for consumers of all utilities. The treble damages provision of the CSPA is intended to act as a penalty for violating the law.³ This is meant to deter companies from committing the same unfair or deceptive practice multiple times. The Bill would eliminate this deterrent for telephone company consumers who benefit from it. In fact, telephone companies are rarely made to pay treble damages, so their exposure has been very limited. Treble damages should remain in the law for consumer protection.

³ See Grieselding v. Krischak (Lucas Cty. June 1, 2007), No. L-06-1010, 2007 Ohio App. LEXIS 2489, at **9.

And the final points concern PUCO jurisdiction. The PUCO's jurisdiction over telephone companies was diminished in previous legislation, and the Bill further reduces the PUCO's jurisdiction, to the detriment of consumers. The Bill would remove PUCO jurisdiction to approve telephone company mergers and acquisitions, and place it solely in the hands of the Federal Communications Commission in Washington, D.C. But the FCC might not be as attuned to the needs and circumstances of Ohioans as the PUCO may be. Thus, the Bill would take away an important venue for determining whether the transaction is in the public interest *in Ohio*.

The Bill also appears to limit 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 586-588). This would hinder the PUCO's ability to act on its own initiative to ensure that telephone company facilities are operating properly.

Again, thank you for the opportunity to testify regarding House Bill 402 and its impact on Ohioans. I'll be happy to answer your questions.



POLICY OPTIONS FACT SHEET

State policy options to increase food security and access to healthy food

Updated April 2017

The **2017 HPIO Health Value Dashboard** identified food insecurity as one of Ohio's greatest health challenges. This fact sheet highlights effective strategies to increase food security and improve access to healthy food and nutrition outcomes.

Food insecurity in Ohio

- **Ohio is in the bottom quartile of states for food insecurity, ranking 45th.** This means that a higher percent of Ohioans are living without reliable, daily access to enough food compared to the percent in most other states.¹
- **Sixteen percent of Ohioans live in food-insecure households,**² including nearly a quarter of children³ and 18 percent of seniors.⁴

Health outcomes and costs

- Poor nutrition is a key factor in many of the leading causes of death in Ohio, including **heart disease, stroke, diabetes** and **cancer**.⁵
- Food insecurity is associated with **increased diabetes risk and poor diabetes control in adults**⁶ and **poor academic performance in children**.⁷
- Almost 15 percent of working-age adults enrolled in Medicaid in Ohio report having diabetes, well above the state rate of about 11 percent.⁸ **Managing diabetes is estimated to cost Medicaid nearly \$4,000 per person per year in medical costs.**⁹

Evidence-based strategies relevant to state policy	Proven outcomes	
	Increased access to/sales of healthy foods and/or improved nutrition	Increased food security
Fruit and vegetable incentive programs. See detail on page 2	✓	
Healthy food in convenience stores/small retailers. ★ See detail on page 3	✓	
Nutrition interventions in preschool and child care. Healthy food for children in child care could be incentivized through the Step Up to Quality rating system and supported through increased training and technical assistance (Ohio Healthy Program).	✓	
Diabetes Prevention Program. Use of this nutrition and physical activity coaching program could be expanded through increased provider screening and referral, funding for new sites and/or Medicaid reimbursement.	✓	
School breakfast programs. ★ Participation in this federally-funded program could be increased. Ohio had more than \$26 million in unclaimed federal reimbursements in 2015-16. ¹⁰	✓	✓
Housing assistance, such as rental housing vouchers or rapid re-housing programs. ★ Many low-income families spend more than half of their income on housing, leaving little left for food.		✓

★=Likely to reduce health disparities (**What Works for Health** has indicated that the strategy is likely to decrease disparities, including racial/ethnic, socioeconomic, geographic or other disparities, based upon the best available evidence.)

Blue text indicates link to detailed strategy description

Fruit and vegetable incentive programs

Nutrition incentives increase the value of Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) dollars when spent on produce, making fruits and vegetables more affordable for low-income consumers.¹¹ For example, when a consumer spends \$10 in SNAP on fruits and vegetables, they get an additional \$10 to spend on fruits and vegetables.

These incentive programs bring new dollars into local economies through payments to farmers and food retailers.

Ohio status

- In 2016, SNAP incentive programs were operating in 12 Ohio counties. Seventy-three of Ohio's 316 farmers markets participated (23 percent).¹² Local programs included Produce Perks in Cincinnati and Cleveland, Veggie SNAPS in central Ohio, Carrot Cash in Akron and Double Food Bucks in Toledo.
- Expanding in 2017 under the statewide name **Produce Perks**, these programs will include a small number of grocery stores, as well as farmers markets. The goal is to reach approximately 27,000 low-income Ohioans this year.
- Produce Perks is currently supported by local and state funding, as well as federal funding from the U.S. Department of Agriculture (USDA) Food Insecurity Nutrition Incentive (FINI) grant program.

Policy options

The Produce Perks incentive program could be scaled up to reach more low-income and rural communities by:

- Expanding the number of SNAP consumers and retailers (grocery stores, convenience stores, farmers markets, etc.) participating in Produce Perks.
- Increasing the efficiency of electronic benefits transfer (EBT) for Ohio's SNAP processing vendors by providing wireless EBT equipment and service to all farmers markets as part of their state SNAP contract.

In addition to fruit and vegetable incentives, limiting unhealthy foods purchased with SNAP funds may increase the effectiveness of incentive programs.¹³ However, the USDA has not allowed any jurisdictions to implement restrictions.

Possible funding sources

- Support the Ohio Nutrition Incentive Network's effort to secure a large-scale FINI grant from the USDA. A 100 percent non-federal match is required.
- Invest a portion of existing soft drink sales tax revenue toward food access strategies, such as Produce Perks. (Ohio's sales tax applies to soft drinks.¹⁴)
- Encourage investment through private philanthropy, corporate sponsorship, hospital community benefit and/or state general revenue to expand Produce Perks.

See **Evidence Inventory** publication for details and additional strategies

Healthy food in convenience stores/small retailers

Small retailers such as convenience stores, gas stations and corner stores are sometimes the only food retail options in low-income or rural communities. These stores typically carry foods such as sugary drinks, chips and candy, rather than fruits, vegetables or other nutritious foods.

Initiatives that include financial incentives, infrastructure (such as refrigeration) and marketing can support small retailers to carry fresh produce and other healthier options. These programs can lead to increased customer traffic and profit for small food retailers.¹⁵

Ohio status

- Ohio's **Good Food Here** initiative, coordinated by the Ohio Department of Health, provides technical assistance and marketing materials to local communities to encourage small food retailers to stock fruits, vegetables, whole grains and other healthier food options. Using grant funds, some local communities also provide incentives for store improvements, such as paying for shelving and refrigeration.
- In 2016, 80 stores in 11 counties were participating in the Good Food Here program.¹⁶

Policy options

The Good Food Here initiative could be scaled up to reach more low-income and rural communities by:

- Providing financial incentives to small retail stores to participate.
- Assisting small retailers with infrastructure improvements (refrigeration, shelving, signage, etc.) and marketing, and providing education for consumers.
- Increasing coordination between the Ohio Department of Health and the Ohio Department of Agriculture to promote the sale of Ohio-grown produce in small retail stores.

Possible funding sources

- Increase state investment in **Healthy Food for Ohio**, a public-private partnership that provides loans and grants to food retailers developing new or renovating existing fresh food retail in underserved communities.
- Leverage Community Development Block Grant funds to support business development for healthy food retailers.
- Invest a portion of existing soft drink sales tax revenue toward food access strategies, such as the Good Food Here initiative. (Ohio's sales tax applies to soft drinks.¹⁷)
- Encourage investment through private philanthropy, corporate sponsorship, hospital community benefit and/or state general revenue to expand Good Food Here.

Our approach

To identify the strategies in this publication, HPIO and the Center for Public Health Practice (CPHP) at the Ohio State University developed an **Evidence Inventory** summarizing the following research reviews:

- What Works for Health (County Health Rankings and Roadmaps)
- Nutrition Evidence Library (USDA)
- The Guide to Community Preventive Services (CDC)
- U.S. Preventive Services Task Force Recommendations (Agency for Healthcare Research and Quality)

HPIO and CPHP selected strategies from the Evidence Inventory to include in this fact sheet that met the following criteria:

- Strong evidence for increasing food security and access to and/or sales of healthy food and improved nutrition
- Relevant to state policy and actionable by state legislators and/or state agency leaders
- Timely opportunity for our state given Ohio's current status and alignment with existing efforts, such as the **2017-2019 state health improvement plan**

How can we improve health value in Ohio?

The **2017 HPIO Health Value Dashboard** identifies areas in which Ohio's performance is worse than most other states, including:

- Adult smoking
- Secondhand smoke exposure for children
- Cardiovascular disease
- Food insecurity
- Drug overdose deaths
- Infant mortality



HPIO's **Guide to Improving Health Value** provides policymakers, community health improvement planners and philanthropy with the best-available sources of evidence for what works to address many of these challenges.

This fact sheet is part of a series of tools that comprise the Guide to Improving Health Value. HPIO will continue to add tools on specific health challenges throughout 2017. All publications can be found at: www.hpio.net/guide-to-improving-health-value

Notes

1. Coleman-Jensen, Alisha, Matthew P. Rabbitt, Christian Gregory and Anita Singh. *Household Food Security in the United States in 2015, ERR-215*. U.S. Department of Agriculture, Economic Research Service, September 2016. <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx#map> as compiled by the Health Policy Institute of Ohio. *2017 Health Value Dashboard*, March 2017.
2. Ibid.
3. Data from the 2014 U.S. Census Bureau Current Population Survey, as compiled by Feeding America. *Map the Meal Gap 2016*. Accessed June 2016. <http://www.feedingamerica.org/hunger-in-america/our-research/map-the-meal-gap/2014/map-the-meal-gap-2014-exec-sum.pdf>
4. Data from 2014 U.S. Census Bureau Current Population Survey, as compiled by the National Foundation to End Senior Hunger. "The State of Senior Hunger in America 2014: An Annual Report." June 2016. Accessed June 2016. <http://www.nfesh.org/wp-content/uploads/2016/05/State-of-Senior-Hunger-in-America-2014.pdf>.
5. *The Impact of Chronic Disease in Ohio: 2015*. Ohio Department of Health, Bureau of Health Promotion, Chronic Disease Epidemiology and Evaluation Section, 2015. http://www.healthy.ohio.gov/-/media/ODH/ASSETS/Files/health/Chronic-Disease-Plan/CD-Burden-Final_Webv2.pdf.
6. Seligman, H., et al. "Food Insecurity is Associated with Diabetes Mellitus: Results from the National Health Examination and Nutrition Examination Survey (NHANES) 1999–2002." *Journal of General Internal Medicine* 22, no. 7 (2007):1018–1023. See also, Seligman, H., et al. "Food Insecurity and Glycemic Control among Low-Income Patients with Type 2 Diabetes." *Diabetes Care* 35, no. 2 (2012): 233–238. See also, Seligman, H.K., Larica, B., Kushel, M.B. "Food Insecurity is Associated with Chronic Disease among Low-Income NHANES Participants." *Journal of Nutrition* 140, no. 2 (2010): 304–310.
7. Shepard, Donald S., Elizabeth Setren and Donna Cooper. "Hunger in America: Suffering We All Pay For." *Center for American Progress*, October 2011. <https://www.americanprogress.org/issues/poverty/report/2011/10/05/10504/hunger-in-america/>.
8. Data from the 2015 Ohio Medicaid Assessment Survey (OMAS) Adult Dashboard. Ever been told had diabetes (all ages). Accessed June 2016. <http://grcapps.osu.edu/dashboards/OMAS/adult/>.
9. Data from the Centers for Disease Control and Prevention Chronic Disease Cost Calculator version 2, prepared by Ohio Department of Health. Provided April 28, 2016.
10. *School Breakfast Scorecard: School Year 2015-2016*. Food Research and Action Center. Accessed April 2017. <http://frac.org/wp-content/uploads/school-breakfast-scorecard-sy-2015-2016.pdf>
11. *Improving Diets of Low-Income Americans through SNAP Pricing Incentives*. John's Hopkins Center for a Livable Future. Summer 2012. Accessed August 2016. http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/_pdf/projects/fsp/farm_bill/SNAP-Pricing-Incentives.pdf.
12. Wholesome Wave. 2016. SNAP and healthy food incentive use at direct-to-consumer markets in Ohio, 2016. Data provided directly to HPIO by Wholesome Wave.
13. Harnack, Lisa, et al. "Effects of subsidies and prohibitions on nutrition in a food benefit program: A randomized clinical trial." *JAMA Internal Medicine*.
14. ST 2004-01- Food Definition, Ohio Department of Taxation, accessed April 2017. http://www.tax.ohio.gov/portals/0/sales_and_use/information_releases/st200401.pdf
15. doi:10.1001/jamaintermid.2016.5633 (2016).
16. *Healthier Corner Stores, 2014*. The Food Trust. Accessed April 2017. http://thefoodtrust.org/uploads/media_items/healthier-corner-stores-positive-impacts-and-profitable-changes.original.pdf
17. Includes number of stores participating in Good Food Here and/or the Ohio Healthy Food Retail Network. Data provided directly to HPIO by the Ohio Department of Health, April 10, 2017.
18. ST 2004-01- Food Definition, Ohio Department of Taxation, accessed April 2017. http://www.tax.ohio.gov/portals/0/sales_and_use/information_releases/st200401.pdf



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