

**Ohio Senate Public Utilities Committee
Testimony on Substitute Version House Bill 402**

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Hello Chair Cupp, Vice-Chair Carfagna, Ranking Member Ashford, and members of the Committee. AARP appreciates the opportunity to comment today on Substitute House Bill 402. AARP represents nearly 1.5 million members in Ohio. The reliability and affordability of basic phone service is essential to our members and older residents generally, whether they live in downtown Cincinnati or the foothills of the Appalachian Mountains. I will explain why AARP opposes Substitute House Bill 402 and why Substitute House Bill 402 is not in the public interest.

At the outset, let me say that AARP testified in February regarding House Bill 402 as it was initially introduced, and AARP acknowledges that the substitute bill, the version that is before us today, is a tiny bit better for consumers than the earlier version. But the substitute bill still falls woefully short of bringing benefits to Ohioans and instead creates unnecessary harm for consumers.

The bill would not benefit Ohioans nor would it promote economic development in Ohio's communities. Instead, it would place the public safety of residents at risk, impede the work of public responders, and enable phone companies to allow their networks to deteriorate. Moreover, it would raise the price of an essential service, harming the state's most vulnerable customers.

A reliable network is essential for dependable access to 9-1-1 emergency services

There are many reasons that a reliable network is important to Ohioans, foremost of course being dependable access to 9-1-1 emergency services – a network is as strong as its weakest link and so the quality of the dial tone line is essential to public safety. By eliminating oversight of service quality, this bill would jeopardize the condition and quality of the phone network, upon which many Ohioans, especially older ones and those who live in rural areas of the state, rely.

Ohio should avoid the path of other states that have found that they prematurely lessened oversight of their phone companies' service quality. Other states have been and are in the process of investigating serious service quality concerns and are either continuing their oversight of or are seeking ways to re-assert oversight of phone companies' service quality (for example, in California,¹ Maryland,² New York,³ and Wyoming⁴). Just a few months ago (in July), the New York Public Service Commission approved a comprehensive settlement under which, among other things, Verizon has committed to a targeted remediation plan to fix failing copper plant in its network – absent the NYPSC's oversight consumers in rural communities would face unreliable phone service.⁵ The point is service quality is more of a concern than ever.

By removing critically important regulatory oversight of the condition and quality of the public network, Substitute House Bill 402, would open the door to service quality problems in Ohio, making it harder for regulators to detect and prevent out-of-service phone lines.

¹ California Public Utility Commission R.11-12-001, Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules, filed December 31, 2011.

² Maryland Public Service Commission Order No. 88437, In the Matter of the Maryland Office of People's Counsel's Petition for an Investigation into Verizon Maryland's Provision of Basic Local Phone Service over Copper or Fiber Networks, October 25, 2017.

³ New York Public Service Commission Case 16-C-0122 – Proceeding on Motion of the Commission to Consider the Adequacy of Verizon New York Inc.'s Retail Service Quality Processes and Programs, Order Adopting Terms of Joint Proposal, July 12, 2018 ("NYPSC Service Quality Order").

⁴ Wyoming Public Service Commission Docket No. 90000-113-XI-10, Docket No. 90000-122-XI-15, and Docket No. 90000-128-XI-16, In the Matter of the Investigation by the Commission on Its Own Motion Into the Quality and Reliability of Telecommunication Service Provided by Qwest Corporation d/b/a CenturyLink QC..

⁵ The NYPSC had opened up an in-depth investigation in March 2016 into Verizon's maintenance of its network, finding that competition was not sufficient to yield adequate service quality. *NYPSC Service Quality Order*.

AARP has looked hard to locate the public benefits that might flow from Substitute House Bill 402. We have not found any. The bill would not increase the incentive for phone companies to roll out advanced telecommunications to those communities that are being left behind, nor would it spur industry efforts to close the digital divide between urban and rural areas, nor does it address the broadband disparities that are leaving low-income communities with inferior broadband internet access,⁶ nor does it include measures to facilitate broadband adoption through digital literacy programs. Instead, it would facilitate phone companies' neglect of the network upon which the state's most vulnerable citizens continue to rely. Extreme weather patterns are increasingly prevalent – a reliable network that functions during power outages and in areas of spotty cell service is of paramount importance to the safety and well-being of communities and residents in this state.

AARP members depend on basic phone service and are far less likely to “cut the cord” than is the general population

AARP members count on dial tones to connect them to public safety, medical services, and more. Three out of four persons aged 65 and over rely on landlines⁷ and most of these persons

⁶ “AT&T’s Digital Redlining,” The National Digital Inclusion Alliance, March 10, 2017. Among other things, the report states:

Our analysis, based on newly released FCC Form 477 Census block data for June 2016, provides clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates – including Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others.

This analysis is part of a six-month effort that began when CYC and NDIA learned that residents of many Cleveland neighborhoods were being declared ineligible for AT&T’s “Access” discount rate program, solely because they couldn’t get AT&T connections at the 3 mbps download speed that was then the program’s minimum requirement.

https://drive.google.com/file/d/0B62ag-I_FGHRN1hbbDdQX2NiV2s/view.

AT&T’s response to the report does not address the specific concerns raised, but instead describes, at a very general level, its investments and technologies. <http://connectyourcommunity.org/atts-response-isnt-responsive/>

⁷ “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2017,” Stephen J. Blumberg, Ph.D., and Julian V. Luke, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, released June 2018, at 6.

subscribe to incumbent phone companies' landlines, that is, AT&T's and Frontier's basic phone service.

The reason that the typical landline of choice by older persons is AT&T's and Frontier's dial tone is that older persons are far less likely to subscribe to broadband internet access than are their younger counterparts – therefore many older persons lack the broadband platform that is required to support the primary wireline alternative to the ILECs' service (the Voice over Internet Protocol (VoIP) service offered by cable companies). Only 50 percent of persons 65 and over have broadband in the home.⁸ Moreover as people's age increases, that percentage declines yet further. And as residents' income declines, broadband adoption declines yet further. Again, without the broadband platform, *there is no wireline alternative to the ILECs' phone service for the residential customer. There is not a competitive landline option. Again, 75% of persons aged 65 and over continue to live in homes with landlines.*

Table 1
Broadband Adoption by Age Segment⁹

Broadband Adoption	18-29	30-49	50-64	65 and over
Percent with Broadband at Home	67%	70%	68%	50%

Moreover, broadband adoption varies significantly among those 65 and over, with broadband adoption declining as age increases, as is shown in Table 2 below. Yet the likelihood of needing medical and emergency services increases as age increases,

⁸"Internet/Broadband Fact Sheet," Pew Research Center Internet & Technology, February 5, 2018 ("Internet/Broadband Fact Sheet"), <http://www.pewinternet.org/fact-sheet/internet-broadband/>. The Pew Research Center states regarding its adoption numbers over time: "Note: The Center has used several different question wordings to identify broadband users in recent years, which may account for some variance in broadband adoption figures between 2015 and 2018. Our survey conducted in July 2015 used a directly comparable question wording to the one conducted in January 2018."

⁹ Id.

meaning that the citizens who are most likely to need a reliable dial tone are precisely those least likely to have a landline alternative.

Table 2
Broadband Adoption Among Older People (all incomes)¹⁰

Broadband Adoption	65-69	70-74	75-79	80 and over
Percent with Broadband at Home	66%	61%	41%	28%

Broadband adoption among older people also declines among those with lower incomes, as Table 3 shows.

Table 3
Broadband Adoption by income level (Persons 65 and older)¹¹

Broadband Adoption	< \$30K	\$30-50K	\$50-75K	\$75K and over
Percent with Broadband at Home	27%	50%	75%	87%

Older persons are disproportionately vulnerable to the harmful effects of House Bill 402

To be clear, without a broadband connection (which older persons, persons of lower incomes, and rural residents are less likely to have than the general population), customers cannot avail themselves of the primary wireline alternative to basic services – that is, Voice over Internet Protocol or VoIP. Putting these facts together brings me to my key point -- older residents, low-income individuals and rural communities are disproportionately vulnerable to the harmful

¹⁰ “Tech Adoption Climbs Among Older Adults,” Pew Research Center, Internet & Technology, by Monica Anderson and Andrew Perrin, May 17, 2017 (“Tech Adoption Climbs Among Older Adults”) <http://www.pewinternet.org/2017/05/17/tech-adoption-climbs-among-older-adults/>

¹¹ *Tech Adoption Climbs Among Older Adults*.

effects of the premature deregulation of traditional wireline service that Substitute House Bill 402 would authorize:

- The bill would raise rates for an essential service (allowing basic phone service rates *to increase by two dollars each year (so in three years, the basic rate could increase by six dollars)* (see proposed changes to Sec. 4927.12)). Moreover, the bill allows ILECs to increase rates for basic local exchange services “upward by any amount and at any time” four years after the bill’s effective date unless the General Assembly proactively agrees to act upon a PUCO report also required by the bill. This adoption of “full pricing flexibility” offers seniors and low-income individuals who rely upon basic telephone services no protection or guarantee of access to affordable, reliable communications’ services, especially in rural areas where broadband access is often limited and expensive.
- The bill would eliminate significant service quality protections. (Among other proposed changes to the statute, Sec. 4927.02 (11) of Substitute House Bill 402 states: “Allow and encourage competition and market forces to determine the availability, prices, terms, and other conditions of providing telecommunication s services.”) AARP fully supports the development of competition, but where it does not yet exist, consumers need the protection of regulatory oversight of essential services such as basic local exchange service. *If competition exists, why do phone companies need your approval to raise rates by two dollars **each** year, including for Lifeline customers, and if competition would cause ILECs to maintain their networks, why should ILECs be concerned about continuing oversight of their provision of adequate, reliable service?*
- The bill would remove critical state regulatory oversight of mergers and transfers (Sec. 4905.402) and instead would defer to the decision of the Federal Communications Commission, requiring PUCO approval only when there is no pending application with the FCC or when, although there is an FCC application, the FCC waives the exercise of its authority. State regulators have unique, distinct, and essential expertise that the FCC cannot provide. Substitute House Bill 402 would eliminate that vital role for Ohio regulators, which would harm Ohioans.
- The bill would eliminate an essential incentive for utilities to comply with Ohio law and regulatory decisions and thus would diminish consumer protection because the bill would

exempt telephone companies from the existing provision that makes utility companies liable for treble damages for violations of PUCO's orders (lines 367-368).

Substitute House Bill 402 would diminish the adequacy of basic phone service in Ohio, harming older consumers and rural communities

Sec. 4927.02. (A) of Substitute House Bill 402 would change the policy of Ohio from ensuring "the availability of adequate basic local exchange service or voice service to citizens throughout the state" to ensuring "the adequacy and reliability of basic local exchange service where available to citizens in the state, and the adequacy and reliability of voice service throughout the state." AARP fully supports the mandate for adequate and reliable service, and so AARP acknowledges that the language in the Substitute Bill is preferable to the language in the bill as it was originally introduced (which would have deleted the reference to "adequate" and would have simply stated: "[e]nsure the availability of voice service to citizens throughout the state"). However, AARP is concerned that the qualifying language in Substitute House Bill 402 that states "where available" could invite ILECs to discontinue basic local exchange service.

Market forces are insufficient to yield affordable, reliable basic phone service

The bill inappropriately relies on market pressures to yield safe and adequate service at reasonable rates. Sec. 4927.02 (11) of Substitute House Bill 402 states: "Allow and encourage competition and market forces to determine the availability, prices, terms, and other conditions of providing telecommunication s services." AARP supports measures to encourage competition but where it does not yet exist, for example, in rural communities, regulatory oversight is insufficient to protect consumers from rate increases and service quality. *Market forces for basic dial tone service are insufficient to yield affordable, reliable phone service.*

Please realize that the older persons who live in your communities, the older persons who first responders need to be able to reach reliably in good and bad weather, and your parents and grandparents who continue to use their landlines are especially vulnerable to the harmful consequences of Sub. House Bill 402 as they disproportionately rely on landline service. AARP understands that with the passage of time and the accompanying migration by households to

other platforms, this vulnerability will likely change. For now, though, it is premature to let go of critical oversight of phone service. And please realize that when phone companies maintain their networks, those networks provide dial tone service that works during prolonged power outages – unlike cell phones and ,VoIP service.

Please don't rely on broad assertions of competition to protect consumers. In any given community, there are two significant players in the residential landline market– the ILEC (either AT&T or Frontier) and the cable company. Cable companies do not compete with each other, but instead serve their respective franchise areas. A phone company-cable company duopoly does not provide adequate competition. Moreover, as the age of residents increases, the likelihood that they have the broadband platform in their home necessary to support the cable companies' phone alternative declines, meaning that older persons disproportionately rely on AT&T's and Frontier's wireline services. By the way, if competition is as widespread as the bill's proponents would claim, why do AT&T and Frontier need to be able to *raise* rates and why do they need to be able to allow their networks to deteriorate without oversight?

One of the ILECs' most persistent arguments for deregulation is that consumers have many alternative services that they can obtain from the ILECs' competitors, including cable companies and wireless telecommunications providers. Particularly for older consumers, "competitive" alternative services are often an inadequate substitute for stable wireline phone service. Older consumers are less likely to be "cord-cutters" – that is, willing to rely exclusively on a mobile wireless phone. Mobile wireless alternatives can be more expensive (and require per-person rather than per-household subscriptions); both fixed and mobile wireless services may be less reliable during emergency conditions (due to network congestion on shared transmission paths). Coverage can also be a problem in rural areas and certain building structures. Those on fixed incomes are less likely to be able to afford the multi-service bundles of video programming, internet access, and voice service that are often typically promoted by cable companies. Service quality protections that apply to ILECs under existing law are fundamental to ensuring safe and reliable universal service. Unless and until an ILEC upgrades existing network facilities to newer, more reliable technology, it should retain the obligation to maintain its existing network in good working order. In several states, there have been investigations triggered by

concerns that the ILEC was allowing its network to deteriorate in locations where it deemed service unprofitable and where no investment in replacement facilities was underway.

Substitute House Bill 402 lacks any benefits for consumers or the public interest

AARP has looked hard to try to find something in Substitute House Bill 402 that might conceivably be beneficial for AARP's members or the broader public interest. We have found nothing. We are perplexed by the need for this legislation and urge you to focus your efforts instead on more important matters concerning Ohio's communications infrastructure, such as bringing broadband internet access at reasonable speeds into the homes of persons of all ages, incomes, and geographies. This bill is an unfortunate distraction from far more pressing matters.

Please understand a vital point --- *AARP welcomes new technology* – provided that it is reliable, easy to use, and affordable. In particular, AARP applauds initiatives to facilitate broadband adoption throughout the state, especially among older Ohioans and AARP welcomes initiatives to encourage broadband deployment in unserved rural areas and underserved urban neighborhoods. Indeed, we stand ready to work with you on legislative initiatives to make sure that all Ohioans, young and old, are on the right side of the digital divide. Broadband internet access is critically important to aging in place – it enables telemedicine, overcomes social isolation, supports civic engagement and enables distance learning, among other things.

But Substitute House Bill 402 has nothing to do with bringing advanced telecommunications and broadband to the state's older citizens. It is a step backward, not the step forward that Ohioans deserve. Substitute House Bill 402 would harm the state's most vulnerable citizens:

- Prices for basic dial tone line service could increase above and beyond the amount that is presently permissible and, moreover, would eliminate existing protection for Lifeline customers from price increases.
- Incumbent phone companies could neglect their copper networks, allowing outside plant to deteriorate, leading to increased numbers of out-of-service dial tone lines, jeopardizing public safety. Other states, such as California, Maryland, New York, and Wyoming have

all recently investigated concerns about service quality or are in the midst of such investigations.

Many Ohioans continue to rely on ILECs' phone service

AARP acknowledges that cable companies and wireless companies have made inroads into markets that have traditionally been served by AT&T and Frontier. Despite these inroads, many Ohioans rely on basic local exchange service. The continuing and significant reliance by Ohioans on ILECs' phone service underscores the importance of ensuring a smooth transition to new technologies. The most recent FCC data (as of December 2016) show that 1,135,000 (that is, more than one million) Ohio households continue to rely on ILECs' voice service. ILECs provide almost half (47%) of all residential landlines in Ohio. Approximately 1,207,000 households rely on Voice over Internet Protocol offered by companies other than the ILECs (and approximately 276,000 households rely on VoIP offered by ILECs), but VoIP requires a broadband platform. Older persons are significantly less likely to have broadband in their homes than is the general population. Rural communities are far less likely to have broadband. Therefore, the VoIP offerings of cable companies do not constrain the rates and quality of ILECs' basic local exchange service.

Substitute House Bill 402 does not offer consumers or communities any benefits

While incumbent phone companies have often asserted that they will invest more readily in states with greater deregulation, they have never substantiated this claim. In reality, they are more likely to invest in locations they consider the most likely to generate profits and not in those areas where costs are high, or revenue opportunities are low. This helps to explain why investments have flowed more consistently into certain urban/suburban areas than into more rural locations. It also helps to explain why competitive options are not uniformly available to consumers in different communities.

It is crucial that the Legislature not merely take at face value the ILECs' promises and threats about future investments and assertions of purported competitive pressures. A network that is not maintained, an outside plant that is neglected and a dial tone that is not repaired in a timely manner all pose an unnecessary risk to Ohio's households, jeopardizing citizens' ability to reach

public safety. A more modern network should not mean a less reliable one. Modern laws should bolster public safety; they should not place it at risk. Sub. House Bill 402 would raise new and unnecessary risks for Ohio consumers. Sub. House Bill 402 would potentially hasten phone companies' neglect of their basic networks, benefiting their shareholders and harming their consumers. A network is as strong as its weakest link. If basic service (i.e., POTS) doesn't work, households and businesses cannot reach 9-1-1 services. If phone companies ignore customers when they report that their dial tone lines are out of service, the answer is not less regulation.

Conclusion

For all of these reasons, AARP urges you to reject Substitute House Bill 402. We appreciate the opportunity to comment on this critical matter and welcome the opportunity to work with you to ensure that Ohio consumers retain access to affordable, reliable, high-quality telecommunications service, and also to address barriers to widespread broadband adoption.

Thank you for the opportunity to provide testimony on Sub. HB 402.