

Before
The Ohio Senate
Public Utilities Committee
December 6, 2018

Testimony of Jon F. Kelly
In Support of Substitute 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 the last Chairman of the PUCO in the Administration of former Governor James A. Rhodes. I am here today to speak in support of Substitute House Bill 402. I've attached to my testimony a summary of the amendment to the bill as well as some responses to the points raised by the opponents at last week's hearing.

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 the recognition that the traditional monopoly regulatory framework was no longer appropriate in all segments of the telecom industry.

In brief summary, six separate bills accomplished the following:

1988 – HB 563 – alternative regulation allowed for competitive services

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

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

2007 – SB 117 – statewide video regulation, increasing competition

2010 – SB 162 – major telecom regulatory reform

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

The 2010 reform (S.B. 162) is notable because it repealed 34 antiquated provisions of the law (including some that still referred to telegraphs), limited the application of 28 other provisions, and rescinded 44 PUCO rules.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 update nine sections of the Revised Code and would enact five new sections, including three that are simply moved and renumbered for clarity.

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 helps level 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. For AT&T Ohio, that number is 90%. These customers have, for the most part, migrated to services provided by cable companies, wireless, and VoIP service providers. Those services are not regulated. They are market-driven services, they have grown tremendously, and they provide the services of choice to consumers and businesses alike.

It will also stimulate investment in Ohio and 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 infrastructure will foster economic development opportunities and give a strategic advantage to the state. Outdated regulations are clearly a deadweight drag on our economy.

The Ohio telecom industry is a \$23 billion industry that continues to grow. It employs more than 16,000 Ohioans and contributes greatly to state and local tax revenues.

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 coming to Ohio, giving Ohioans a choice for television service and giving the traditional monopoly cable providers some needed competition. This bill is the next logical step to maintain this trend.

Ohio's public policy should create incentives - - not barricades - - for these investments. The modest reforms proposed in this bill will go a long way toward accomplishing that goal for the entire telecom industry.

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.

Consumer Groups (led by OCC)

1. OCC acknowledges significant line losses from 2002-2010, and from then to now. OCC, p. 4. It notes that line loss data will be necessary to implement the bill. We agree, and that is something we will urge the PUCO to address when it considers rules to implement this bill, as it must do under Section 3 of the bill.

2. OCC criticizes the change to the policy statement regarding basic local exchange service at line 370 of the bill. The CWA makes the same argument. This is simply a restatement of the policy because BLES is going away, eventually. It is appropriate for the state to recognize this fact in its policy. The 2015 legislation that addressed the state's "carrier of last resort" requirement (H.B. 64) recognized that this transition is underway. The FCC has recognized this, on a national basis, in its orders that will phase-out federal lifeline support for voice service over the next three years in favor of support for broadband services.

CWA

1. The CWA suggests that all PUCO authority is removed by this bill. CWA, p. 2. This is simply not true. The Commission retains investigatory and complaint jurisdiction under Sections 4927.19 - 4927.21 to address unjust or unreasonable rates, practices, or services. These powers are not affected by the bill.

AARP

1. AARP criticizes the elimination of service quality standards. AARP, p. 2. AARP is wrong. In an important concession made by the industry in the House, the language that would have repealed the service quality standards for BLES was removed. Therefore, section 4927.08 is not impacted by the bill.

2. AARP also criticizes the removal of the protection from rate increases for Lifeline customers. AARP, p. 9, referencing lines 530-533 of the bill. AARP is wrong again. That protection expired, by its own terms, in 2012. It is therefore an obsolete provision that should be removed.

Ohio Alliance for Retired Americans Educational Fund

1. Cites as contradictory to its advocacy of this legislation AT&T's own proposal at the FCC to "ban resellers from the market" and granting exclusivity to facilities-based providers. This has to do with the federal Lifeline program, and not any state regulatory program under consideration in this bill.

Even so, that is not AT&T's position. In fact, that was the *FCC's* proposal in a Notice of Proposed Rulemaking.

While AT&T generally supports the FCC's efforts at reforming the Lifeline program, it also supported the CTIA's and the USTA's comments to the FCC on this issue. Both groups *support* continuing Lifeline support to wireless resellers.

In CTIA's comments, they noted:

According to the U.S. Government's most recent data, adults living in poverty (67.5 percent) and near poverty (61.6 percent) were significantly more likely than higher income adults (48.5 percent) to be living in households with only wireless telephones.

CTIA Comments to FCC, 2-21-18, p. 11.

Even the USTA, the landline companies' trade association, said:

For example, the proposed elimination of resellers from the Lifeline program would not materially further the deployment of broadband infrastructure, because revenue from resellers already contributes to facilities-based carriers' deployment of broadband facilities, but could harm customers that currently rely on resellers' services.

USTA Comments to FCC, 2-21-18, p. 2.