

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Implementation of Substitute)	
House Bill 402 of the 132 nd Ohio)	Case No. 19-173-TP-ORD
General Assembly)	

**CONSUMER PROTECTION COMMENTS REGARDING HB402
AND PUCO STAFF REPORT
BY
LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO POVERTY LAW CENTER
PRO SENIORS, INC.**

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc. and the Legal Aid Society of Southwest Ohio, Inc. ("Consumer Groups") submit these Comments in response to the Public Utilities Commission of Ohio's ("PUCO") December 15, 2021, Entry in Case No. 19-173-TP-ORD and the Staff Report attached to the Entry.¹ The 132nd Ohio General Assembly adopted Substitute House Bill 402 ("HB402"), which became effective on March 20, 2019. HB402 addressed a number of topics related to the regulation of local telecommunications in Ohio, including pricing flexibility for basic local exchange services ("BLES"). HB402 also directed PUCO Staff to produce a report no later than three years after its effective date to include the following information:

1. The number of BLES lines in service in Ohio at the time of the report;
2. The aggregate amount of line loss in Ohio since HB402's effective date;
and

¹ Entry, Case No. 19-173-TP-ORD (December 15, 2021) ¶ 4.

3. The change in price of BLES in each Ohio exchange area during the three years following HB402's effective date.²

By Entry dated August 25, 2021,³ the PUCO directed each incumbent local exchange carrier ("ILEC") in the state to submit this information, and on December 15, 2021, the PUCO Staff issued its report summarizing the information submitted by the ILECs.⁴

The PUCO implemented a process that only included information from the utilities and its staff. That is not a balanced way of administering justice on a consumer issue. The PUCO analysis of this issue should include public comment.

Regarding implementation of HB402, Consumer Groups' objective has been to preserve protections for the hundreds of thousands of consumers that continue to rely on ILEC BLES services – many which rely on BLES as the only feasible voice service available. Consequently, advancing this Consumer Groups' objective also advances the state telecommunications policies that the Commission must consider when implementing HB402,⁵ including "[e]nsur[ing] the adequacy and reliability of basic local exchange service...and the adequacy and reliability of voice service throughout the state."⁶

These Comments, which Consumer Groups developed in conjunction with QSI Consulting, Inc., have four primary purposes:

- First, the Comments will highlight important findings and conclusions that can be drawn from the Staff Report (and data contained therein) as they

² HB402, Section 4(B).

³ Entry, Case No. 19-173-TP-ORD (August 25, 2021).

⁴ Report of the Staff of the Public Utilities Commission of Ohio Pursuant to Substitute House Bill 402 in Case No. 19-173-TP-ORD, December 15, 2021 ("Staff Report"). The Staff Report is attached to the Commission's December 15th Entry.

⁵ Title 49, Chapter 4927, Section B ("The public utilities commission shall consider the policy set forth in this section in carrying out this chapter.").

⁶ Title 49, Chapter 4927, Section A(1).

relate to the continued importance of reliable and affordable BLES service for Ohio consumers.

- Second, the Comments will discuss certain developments that have occurred in the Ohio telecommunications industry that should be considered by the PUCO and Ohio Legislature as important context by which to interpret the Staff Report and evaluate whether and to what extent the expectations associated with HB402 have been met.
- Third, the Comments will discuss some of the risks of not maintaining sufficient protections for BLES – risks which tend to disproportionately impact vulnerable members of the Ohio population.
- Fourth, recommendations will be provided about findings and conclusions that the PUCO should include in its upcoming report to the Ohio Legislature.

II. THE PRIMARY “TAKE AWAY” FROM THE STAFF REPORT: BLES IS STILL IMPORTANT TO MANY OHIO CONSUMERS AND NEEDS CONTINUED REGULATORY PROTECTION

The Staff Report describes the data request that was submitted to ILECs in order to collect the three categories of data requested in HB402, and then summarizes the data submitted by all 41 Ohio ILECs.

With respect to the first category of data required by HB402 – “the number of basic local exchange lines in service in Ohio at the time of the report”⁷ – Staff states: “Ohio’s ILECs continued to service **360,709** BLES customers.”⁸ This is an extremely important finding in the Staff Report; it shows that even with the numerous marketplace realities facing BLES consumers discussed below (*e.g.*, price increases, line losses, service quality concerns, declining Lifeline support, wireless and VoIP offerings, etc.), a

⁷ November 1, 2021, was selected as the “time of the report.” (Staff Report, p. 1).

⁸ Staff Report, p. 2 (emphasis added).

substantial number of Ohio consumers (albeit a “persistent minority”⁹) continue to rely on BLES. And for reasons discussed below (cost, geographical location, reliability concerns, etc.), BLES is the only feasible voice service option for many Ohioans.

The second category of data required by HB402 is the aggregate amount of line loss in Ohio since HB402’s effective date.¹⁰ PUCO Staff finds that Ohio ILECs had 351,075 fewer lines as of November 2021 compared to March 2019 (a 26.01% decrease). Notably, the aggregate line loss data in the Staff Report includes both BLES and non-BLES lines.¹¹ Office of the Ohio Consumers’ Counsel (“OCC”) issued a public records request seeking the data source(s) used by Staff to compile the ILEC data. Based on the

⁹ As discussed below, the FCC Wireline Competition Bureau recently referred to subscribers of voice-only Lifeline plans as “a persistent minority”. Report on the State of the Lifeline Marketplace, WC Docket No. 11-42, Wireline Competition Bureau, June 2021 (“Marketplace Report”), p. 21.

¹⁰ The term “line loss” is defined in Title 49, Chapter 4927, Section 4827.123 (“Line Loss” refers to the number of access lines, whether residential or commercial, for which a customer of an incumbent local exchange carrier has terminated local exchange service).

¹¹ The term “Basic local exchange service” is defined in Ohio Code 4927.01 as “residential end-user access to and usage of telephone company-provided services over a single line or small-business end-user access to and usage of telephone company-provided services over the primary access line of service, which in the case of residential and small-business access and usage is not part of a bundle or package of services, that does both of the following: (a) Enables a customer to originate or receive voice communications within a local service area as that area exists on September 13, 2010, or as that area is changed with the approval of the public utilities commission; (b) Consists of all of the following services: (i) Local dial tone service; (ii) For residential end users, flat-rate telephone exchange service; (iii) Touch tone dialing service; (iv) Access to and usage of 9-1-1 services, where such services are available; (v) Access to operator services and directory assistance; (vi) Provision of a telephone directory...for no additional charge and a listing in that directory...; (vii) Per call, caller identification blocking services; (viii) Access to telecommunications relay service; and (ix) Access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.” The Legislature and PUCO recognize the critical importance of BLES availability. For example, BLES continues to be a tariffed service subject to PUCO oversight, as compared to non-BLES services which are typically provided via a separate service guidebook which can be unilaterally changed by the service provider. Additionally, Ohio rules contain a significantly higher degree of protection specifically for BLES. “Ensuring the adequacy and reliability of basic local exchange service...and the adequacy and reliability of voice service throughout the state” is the first enumerated telecommunications policy of the state per R.C. 4927.02 (emphasis added). R.C. 4927.08 contains service standards specific to BLES; R.C. 4927.10 contains requirements related to the withdrawal/abandonment of BLES; R.C. 4927.11 contains requirements related to access to BLES; and R.C. 4927.12 contains regulations related to rate changes for BLES – to name a few. As indicated in the above-referenced policy, adequate and reliable voice service (both BLES and non-BLES) is important to Ohioans; however, preserving protections for BLES is of particular importance and should be the focus of the Commission’s report to the Legislature.

PUCO Staff's response to the Public Records Request, OCC was able to differentiate BLES and non-BLES lines, as shown below:

Lines as of March 2019	Lines as of November 2021	Qty Change
Total Lines: 1,349,646	Total Lines: 998,573	-351,073
BLES Lines: 521,085 333,703 Residential 187,382 Business	BLES Lines: 360,709 234,179 Residential 126,530 Business	-160,376 -99,524(res) -60,852(bus)
Non-BLES Lines: 828,561	Non-BLES Lines: 637,864	-190,697

Of the 1,349,646 total ILEC lines as of March 2019, 521,085 lines (39% of total lines) were BLES lines, and 333,703 lines (25% of total lines) were *residential* BLES lines. And of the 998,573 lines in service as of November 2021, 360,709 lines (36% of total lines) were BLES lines, and 234,179 lines (or 23% of total lines) were *residential* BLES lines. Notably, of the aggregate line loss of 351,073 between March 2019 and November 2021, 54% (190,697 lines) was attributable to *non*-BLES lines, while 46% of the total line loss (160,376 lines) was attributable to BLES. More specifically, just 28% (99,524 lines) of the reported line loss from March 2019 through November 2021 was attributable to *residential* BLES.

To provide a reference point for the Staff Report's line loss data, OCC examined switched access line count data reported by Ohio ILECs in the FCC's Voice Telephone Services Reports.¹² These reports provide access line statistics comparable to those in the

¹² This data is reported by Ohio ILECs for 477 reporting purposes. Each of the FCC's Voice Telephone Services Report covers a six-month time period (either month ending June 30 or month ending December 31).

Staff Report, given that the FCC defines a switched access line in similar terms.¹³

According to the most recent report for month ending June 30, 2019 (released in May 2021): Ohio ILECs served 1,085,000 switched access lines as of June 30, 2019, compared to 1,624,000 switched access lines in December 2016, for a total line loss of 539,000 in 30 months. And for that 30-month period, switched access line loss for Ohio ILECs averaged 17,967 per month (539,000/30). By comparison, according to the Staff Report during approximately the same number of months (*i.e.*, 31 months) between March 20, 2019 and November 1, 2021, line losses for Ohio ILECs averaged 11,325 per month (351,073/31).

Thus, the monthly average line loss based on the Staff Report between HB402's effective date and the time of the report is 37% *lower* than the monthly average line loss reported by the FCC for a similar number of months preceding HB402. This indicates that Ohio ILEC line losses occurred at a slower pace in the months following HB402 compared to previous years. One reason for the trend, particularly for BLES customers, may be that many of the customers in locations with attractive voice alternatives have already migrated to them, whereas the remaining consumers see fewer service options or are more constrained in their ability to pay for them.

For the third category of data required by HB402 – *i.e.*, the change in price of BLES in each exchange area in Ohio since HB402's effective date – the Staff Report provides separately for all 738 Ohio exchanges the residential BLES and business BLES rates as of March 20, 2019, and the residential BLES and business BLES rates as of

¹³ See, e.g. FCC Industry Analysis Division, Office of Economics and Analytics, "Voice Telephone Services: Status as of June 30, 2019," rel. April 2021, at p. 14: "Switched access line: A service connection between an end user and the local telephone company's switch; the basis of plain old telephone service (POTS)."

November 1, 2021. This data shows that ILEC BLES price increases are more prevalent for residential BLES compared to business BLES. Between HB402's effective date and the time of the report, Ohio ILECs raised prices for *residential* BLES in significantly more exchanges (444, or 60% of total exchanges) compared to *business* BLES (249 exchanges, or 34% of total exchanges). In addition, the amount of *residential* BLES price increases is generally higher than *business* BLES price increases. For example, the amount of *residential* BLES price increases range between 20%-30% in 419 exchanges (56.78% of total exchanges), compared to 193 exchanges (26.15% of total exchanges) for business BLES. And while residential BLES rates increased by 30% or more in 11 exchanges (1.5% of total exchanges), there were no exchanges in which business BLES rates were increased by 30% or more.

In sum, the Staff Report presents the three categories of information required by HB402, and contains informative data that should be considered by the PUCO: (1) a significant number of Ohioans (360,709 total customers and 234,179 residential consumers) continue to rely on BLES services provided by Ohio ILECs; (2) aggregate line loss data includes both BLES and non-BLES lines and BLES line losses comprise less than half of the aggregate line losses (with residential BLES representing just 28% of reported line losses); (3) price increases are impacting residential consumers to a greater degree (in terms of prevalence and magnitude) than business customers, and (4) price decreases for BLES are virtually non-existent.¹⁴

¹⁴ The Staff Report shows a single de minimis price decrease for business BLES in one exchange.

III. BENEFITS OF HB402 ANTICIPATED BY PROPONENTS OF HB402 HAVE NOT MATERIALIZED

As discussed above, the Staff Report contains the three categories of data expressly required by HB402, and a number of important points can be drawn from the data contained therein. However, the three categories are the bare minimum required in the PUCO's upcoming report to the Legislature: additional context and information around the numbers is needed to fully inform the Legislature on the continued importance of BLES and the risks presented by inadequate safeguards for BLES. In other words, data regarding line counts and prices in a vacuum provides limited value for evaluating whether the existing regulatory model for BLES (as modified by HB402) is working as intended, or for identifying any needed changes to that model. One way to evaluate the post-HB402 regulatory climate is to evaluate whether the benefits of HB402 expressed by its proponents to the Legislature in support of its passage have since come to fruition. As explained below, a number of major anticipated benefits of HB402 have not materialized.

A. HB402 has not stimulated job growth in Ohio's telecommunications sector as claimed by proponents of HB402

One theme that is commonly referred to by ILECs aiming to reform BLES regulations is that reducing/eliminating regulatory oversight over BLES will stimulate job growth. The 2018 testimony in support of HB402 is no exception. In its testimony before the Ohio House of Representatives in support of HB 402, AT&T said: "It will also stimulate additional investment in Ohio and both preserve and create new jobs by reducing regulation."¹⁵ An analysis of the available telecom jobs data for Ohio does not support a claim that HB402 (or previous telecom reform laws) preserved or created jobs.

¹⁵ Testimony of Jon Kelly in Support of House Bill 402, before the Ohio House of Representatives, February 13, 2018.

HB402 became effective in the first quarter of 2019. At that time, there were 24,634 total telecom jobs in the state of Ohio (including Wired, Wireless, Satellite and Other). As of the most recent data for 2Q2021, total telecom jobs in Ohio had dropped to 21,477, a 12.8% *decrease* from 1Q2019. During this same time period, Ohio telecom jobs for wired and wireless telecommunications dropped from 21,735 to 18,839, a 13.3% *decrease*.¹⁶

AT&T made a virtually identical claim in 2009 – that telecom reform legislation would spur job growth – in support of telecom reform bill SB162 (“It will also stimulate additional investment in Ohio and both preserve and create new jobs by removing regulatory risk and cost.”¹⁷) That prior claim was also shown to be strikingly inconsistent with reality. Between the time SB162 became effective in third quarter 2010 and the most recent data available (2Q2021), total telecom jobs in Ohio have dropped from 29,791 to 21,477, a 28% *decrease*. During that same time period, wired and wireless telecom jobs in Ohio have dropped from 26,220 to 18,839, a 28% *decrease*.

This trend of declining telecom jobs in the State is expected to continue well into the future. The “2028 Ohio Job Outlook Employment Projections” issued by the Ohio Dept. of Job and Family Services predicts that telecom annual employment in Ohio will decrease by 5,077 jobs (a 21.5% decrease) between 2018 and 2028.¹⁸ Simply put, claims

¹⁶ Jobs data taken from U.S. Census Quarterly Workforce Indicators (“QWI”), available at: <https://ledextract.ces.census.gov/static/data.html>.

¹⁷ Testimony in support of SB 162 of Tom Pelto, AT&T Ohio, October 6, 2009.

¹⁸ Ohio Dept. of Job and Family Services, “2028 Ohio Job Outlook Employment Projections,” available at: https://ohiolmi.com/docs/PROJ/Ohio/Ohio_Job_Outlook_2018-2028.pdf.

that telecom reform legislation,¹⁹ including HB402, stimulate job preservation and creation is not supported by the data.²⁰

B. The marketplace has not adequately controlled retail service quality as claimed by proponents of HB402

Another common theme referred to by ILECs advocating for telecom regulatory reform is that the marketplace is capable of producing high-quality service for BLES in the absence of service quality metrics/requirements. For instance, in its February 2018 testimony in support of HB402, AT&T stated: “the marketplace adequately controls service quality in this sector.” However, AT&T’s expectation about service quality does not square with information gathered since HB402’s passage.

In June 2019 (approximately three months after HB402’s effective date), the Communications Workers of America (“CWA”) – the authorized bargaining unit representative for more than 3,000 employees of various AT&T entities within the State of Ohio – issued a report entitled “AT&T: Abandoning Rural & Other Communities in Ohio.” This report discusses a number of concerns CWA has about AT&T’s maintenance procedures, headcount reductions and the condition of AT&T’s outside plant (which CWA refers to as “disrepair”). The CWA report states that AT&T reduced its Ohio outside plant technician workforce by 20% (from 2,093 to 1,672) in the two-year period between January 2017 and January 2019, and during the same timeframe AT&T reduced

¹⁹ AT&T’s similar claim that tax reform legislation (Tax Cut and Jobs Act of 2018) would spur investment and job creation has been called into serious question. AT&T advocated for tax cuts in 2017, stating that it would create 7,000 new jobs and spur \$1 Billion in capital expenditures. However, once the tax reform passed, AT&T reportedly saved \$21 Billion and an estimated \$3 Billion annually due to a lower corporate tax rate – but subsequently eliminated 42,000 jobs. “AT&T said Trump’s tax cut would create jobs – now it’s laying off thousands of workers,” The Guardian, by Michael Sainato, March 30, 2021.

²⁰ This is important given that the telecommunications policy of the state is to “create a regulatory climate that provides incentives to create and maintain high technology jobs for Ohioans.” 4927.02(A)(5). The data shows that the regulatory climate is not spurring job preservation or creation in the Ohio telecom sector.

its total Ohio wireline workforce (outside technicians, inside technicians, call center employees and administrative staff) by 21% (from 3,019 to 2,375). The CWA report also states that AT&T is resorting to temporary network fixes in Ohio that result in service quality deterioration and contains photographs of damaged and deteriorated outside plant in AT&T's Ohio wireline network. Some of the photos from the CWA report are reproduced below:

1. This photo from Lafayette Street, Youngstown, OH, shows a severely damaged splice terminal. The terminal's protective case is completely deteriorated, leaving wires exposed to weather and animals. Damaged wires cause service outages.



3. This photo from Emery Road, Warrensville Heights, OH, shows unsecured cable. The cable should be secured to the utility pole. The wind blows the unsecured service cable, damaging the copper inside the wire and causing service issues. In addition, this cable is within reach of passersby, causing a public safety hazard.



19. This photo from South Thomas Road, Tallmadge Road, OH, shows a hanging pole, or a double-pole that has been cut before AT&T moved its facilities to the new pole. The old utility pole was cut with AT&T's terminal still attached to it. Left dangling, the old pole strains the cables and endangers the public. It is a service, worker, and public safety concern.



Also, in June 2019, CWA filed a formal complaint at the PUCO against AT&T seeking a “comprehensive, state-wide investigation into the safety, adequacy and reliability of AT&T’s service and facilities falling under the jurisdiction of the PUCO” (Case No. 19-1314-TP-CSS).²¹ CWA’s complaint contained the pictures shown above (and others) from its report, as well as the following assessment about the condition of AT&T’s telephone network in Ohio:

For many years, AT&T has failed to maintain its physical plant in areas of Ohio. The state of deterioration is now so advanced that poles are literally falling over, animals and insects are infesting broken wiring cabinets, and the safety of AT&T’s employees and the public is being jeopardized every day...due to AT&T’s neglect of its copper infrastructure, many of these customers do not receive the adequate or reliable service that the statute mandates...Many of the safety hazards illustrated above not only pose risks to employees, but these deficiencies also lead to service outages or interference (such as static on the line or loss of dial tone when it rains), which severely affects the adequacy and reliability of service...Records obtained from the PUCO by CWA show that since 2016, the PUCO received more than 6,000 informal complaints from AT&T customers relating to such issues.²²

²¹ Complaint of Communications Workers of America, AFL-CIO/CLC, Case No. 19-1314-TP-CSS, June 12, 2019 (“CWA Complaint”).

²² CWA Complaint, pp. 4, 18.

While the CWA filed a motion to voluntarily dismiss its complaint less than two months later,²³ there is no evidence to suggest that the problems which led to the complaint – *e.g.*, deteriorated network conditions, the use of temporary network fixes, and reduction in wireline workforce – were ever rectified. It is simply not reasonable to assume that AT&T’s failure to maintain its copper physical plant – which CWA stated has been ongoing “[f]or many years” – was somehow resolved in less than two months (or in the two and one-half years since the complaint). There is no evidence that AT&T subsequently invested heavily in its legacy wireline network or hired wireline network employees to replace those cut in recent years. Indeed, according to the informal complaint data collected by the PUCO’s call center, in the two years following CWA’s complaint (2020 and 2021), Ohioans reported 4,170 complaints identified as telecom-related, with complaints about AT&T comprising about 40% of the total telecom-related complaints. The need for an investigation into the safety, adequacy and reliability of AT&T’s wireline network is as necessary today as it was when CWA’s complaint was filed in 2019.

Concerns about deteriorating ILEC retail service quality has been a concern in recent years not only in Ohio, but in states across the country. The numerous, recent investigations into ILEC service quality casts doubt on claims that the marketplace is capable of maintaining high-quality BLES. The following state public utility commissions have investigated ILEC service quality in recent years: California PUC

²³ CWA Motion to Voluntarily Dismiss Petition, Case No. 19-1314-TP-CSS (August 6, 2019). The CWA motion to dismiss was granted by PUCO Entry (October 9, 2019).

(R.11-12-001²⁴ and I.19-12-009²⁵), Maine PUC (2018-00319²⁶), Minnesota PUC (18-122²⁷), New Hampshire PUC (19-023),²⁸ New Mexico PRC (17-00081-UT²⁹), New York PSC (16-C-0122³⁰), Ohio PUC (19-1582-TP-COC³¹), Oregon PUC (AR 624³²), Utah PUC (19-041-01/02/04³³), Vermont PUC (18-3231-PET³⁴), and West Virginia PSC (18-0291-T-P³⁵).

In the Ohio proceeding investigating Frontier's service quality (19-1582-TP-COC), the PUCO received 2,802 consumer contacts regarding Frontier service quality problems between January 2018 and July 2019. In August 2020 – 2 ½ years after AT&T

²⁴ This proceeding was initiated in December 2011 to investigate California wireline companies' service quality performance. In early 2018, the California Commission selected a consulting firm to conduct a network evaluation study. This proceeding is still open.

²⁵ This proceeding was initiated in December 2019 to investigate Frontier's service quality performance. This proceeding is still open.

²⁶ This proceeding was initiated in October 2018 to investigate Consolidated's service quality performance. This investigation was recently closed in December 2021.

²⁷ This proceeding was initiated in February 2018 to investigate Frontier's service quality performance. The proceeding remains open, with Frontier subject to a series of conditions concerning its retail service quality, network maintenance and reporting, response to customer complaints, service credits, and other areas of performance as set forth in a Settlement Agreement approved by the PUC in January 2020.

²⁸ This proceeding was initiated in January 2019 to investigate Consolidated's service quality performance. This proceeding is still open.

²⁹ This proceeding was initiated in May 2017 to investigate Windstream's service quality performance. This investigation was closed in April 2019.

³⁰ This proceeding was initiated in March 2016 to investigate Verizon's service quality performance. This proceeding is still open.

³¹ This proceeding was initiated in August 2019 to investigate Frontier's service quality performance. A stipulated agreement between PUCO Staff and Frontier was adopted by the PUCO in August 2020.

³² This proceeding was initiated in September 2018 as a rulemaking to investigate retail telecommunications service standards.

³³ This proceeding was initiated in May 2019 to investigate Frontier's service quality performance. This proceeding is still open.

³⁴ This proceeding was initiated in September 2018 to investigate Consolidated's service quality performance. This investigation is now closed.

³⁵ This proceeding was initiated in August 2018 to investigate Frontier's service quality performance. Service quality reports continue to be filed in the proceeding.

told Ohio legislators that “the marketplace adequately controls service quality”³⁶ – PUCO Staff and Frontier entered into a Settlement containing specific requirements intended to improve retail service quality performance (some of which specifically targeted BLES). The Settlement terms included re-prioritizing BLES repairs, adopting service quality metrics for single-line residential and business BLES, providing credits for out-of-service conditions lasting 72 hours or more, requiring network investment amounts of at least \$1,000,000 per year to repair defective plant and battery replacement, educating consumers about BLES, and addressing 911 outages.³⁷

IV. LACK OF ADEQUATE BLES PROTECTIONS DISPROPORTIONATELY AFFECTS VULNERABLE SEGMENTS OF THE OHIO POPULATION

Another area of important context that is not reflected in the three categories of data discussed in the Staff Report is that vulnerable Ohioans depend on BLES more heavily than others, and are therefore, more likely to be affected by price increases, deteriorating quality of service, and other aspects associated with inadequate BLES protections. The Staff Report shows that 360,709 Ohio customers (and 234,179 *residential* consumers) continue to rely on BLES. These consumers are proof positive that despite the existence of wireless, broadband-enabled, and other voice alternatives, BLES still plays a critical role in the Ohio telecommunications industry.

There are numerous reasons why Ohio consumers still rely on BLES, some of which are listed below:

- Wireless service providers do not have ubiquitous coverage across the state;

³⁶ Testimony of Jon Kelly in Support of House Bill 402, before the Ohio House of Representatives, February 13, 2018.

³⁷ Finding and Order, Case No. 19-1582-TP-COC (August 12, 2020).

- Cable companies do not build out their networks to every customer in an ILEC's service territory;
- VoIP-based services require a broadband connection, and over-the-top VoIP is often offered at "best efforts" quality of service that is unacceptable to some customers;
- Alternative voices service providers oftentimes do not offer voice service on a stand-alone basis, but instead bundle voice with other services such as Internet and TV;
- Satellite-based voice service is very costly with very small adoption rates;
- Citizens with impaired health status require reliable access to 9-1-1 emergency services;³⁸ and
- BLES is typically priced below alternatives because (as the name suggests) the functionality of the service (*i.e.*, stand-alone voice and access to the PSTN) is more "basic" than alternatives.

These are just a few reasons that lead certain vulnerable Ohioans – typically senior citizens, low-income citizens, and citizens living in rural areas – to be more dependent on BLES for their communications needs, and as such, disproportionately affected by changes made to BLES service.

As shown below, senior citizens, low-income citizens and rural inhabitants are less likely to use the Internet, less likely to have broadband at home, and less likely to "cut the cord" compared to younger, more affluent and urban demographics, respectively.

³⁸ Report on the State of Lifeline Marketplace, WC Docket No. 11-42, FCC Wireline Competition Bureau, June 2021 ("Marketplace Report"), p. 24 ("Finally, as the Bureau recognizes... voice-only services, particularly for those populations that do not have an interest in receiving broadband services, are often Lifeline subscribers' only connection to their communities and emergency services, which is more pronounced during national emergencies such as the COVID-19 pandemic.") See also, Lifeline and Link Up Modernization; Order, WC Docket No. 11-42, November 5, 2021 ("Lifeline/LinkUp Order") ("As a trusted and well-known method for connecting to 911, 988, and other community resources, voice service plays a critical role as a safety net for many low-income Americans.").

These statistics from 2021 shed light on why these vulnerable segments of the population are more dependent on BLES:

- **Internet Usage:**³⁹ (1) 75% of adults aged 65+ reporting using the Internet compared to between 96% and 99% in all other age categories, (2) 86% of adults with income levels below \$30,000 reporting using the Internet compared to between 91% and 98% for all other income levels,⁴⁰ and (3) 90% of adults in rural communities reporting using the Internet compared to 95% in urban areas.
- **Broadband adoption:**⁴¹ (1) 64% of adults aged 65+ reported having broadband at home, compared to between 70% and 86% for all other age groups, (2) 57% of adults with income levels below \$30,000 reported having broadband at home compared to between 74% and 92% for all other income levels, and (3) 72% of adults in rural communities reported having broadband at home compared to 77% in urban areas.
- **Wireless-Only:** 40.8% of adults aged 65+ live in wireless-only households (*i.e.*, have “cut the cord”) compared to between 65.9% and 86.1% for all other age groups.⁴²
- **Broadband Availability:** Ohio communities with higher poverty rates have less access to broadband. Broadband coverage in the five counties with the lowest poverty rates in Ohio (Warren, Delaware, Union, Geauga, and Medina) is 96.4%, while coverage in the five counties with the highest poverty rates (Athens, Scioto, Adams, Pike, and Vinton) is just 74.9% (with Vinton County having only 38.2% broadband coverage).⁴³

³⁹ Pew Research Center, “Internet/Broadband Fact Sheet.”

⁴⁰ *See also*, Marketplace Report, p. 23 (“low-income Americans were twice as likely than higher income people to lack Internet access.”).

⁴¹ Pew Research Center, “Internet/Broadband Fact Sheet.”

⁴² “Wireless Substitution Report,” National Center for Health Statistics, Jan-June 2021. *See also*, Marketplace Report, p. 24 (“Commenters also point out that some populations, such as seniors, may prefer to receive voice-only services because it is easier to use and allows them to accomplish all that they need.”).

⁴³ “2021 State of Poverty in Ohio,” Ohio Assoc. of Community Action Agencies, p. 9. Available at: <https://oacaa.org/wp-content/uploads/2022/01/SOP-2021.pdf> According to the 2021 Ohio Poverty Report, Ohio’s poverty rate exceeds the national average; in 2019, Ohio’s poverty rate was 13.1%, compared to the national average of 12.3%. 2021 Ohio Poverty Report, p. 19, Table 8.

As shown above, senior citizens, low-income citizens and rural Ohioans are less likely to adopt and/or have access to the wireless and IP-enabled technologies that provide voice capabilities.

Moreover, access to affordable BLES for these population segments is perhaps more important today – with the skyrocketing cost of living – than it was when HB402 was enacted. The consumer price index (“CPI”), which measures the cost of core goods, rose 7.5% in January 2022 compared to the year before.⁴⁴ In the Midwest (including Ohio), CPI increased 7.9% in 12 months, with the cost of food rising 8% and energy prices rising 25% year-over-year.⁴⁵ Overall, consumer prices rose in 2021 at the fastest pace in 39 years.⁴⁶ This increase continues for 2022. This paints a very alarming picture for senior citizens on fixed incomes and low-income citizens. Now more than ever, these citizens need an affordable means of communicating with friends and family and accessing emergency services and are unlikely at this time to drop BLES in favor of a higher-priced alternative (if available).

The FCC recently underscored the importance of affordable stand-alone voice services when it delayed implementation of the phase-out of Lifeline support for voice-only services. In June 2021, the FCC’s Wireline Competition Bureau (“WCB”) issued its “Report on the State of the Lifeline Marketplace.”⁴⁷ One of the findings in the report is “a

⁴⁴ U.S. Bureau of Labor Statistics, Economic News Release, February 10, 2022, available at: <https://www.bls.gov/news.release/cpi.nr0.htm>.

⁴⁵ “OH Inflation Rate: prices for food, energy way up in 2022,” by Chris Mosby, February 23, 2022, available at: <https://patch.com/ohio/cleveland/oh-inflation-rate-prices-food-energy-way-2022>.

⁴⁶ “This is the worst inflation in nearly 40 years. But it was so much worse back then,” CNN Business, by Chris Isidore, January 12, 2022, available at: <https://www.cnn.com/2022/01/11/economy/inflation-history/index.html>.

⁴⁷ Marketplace Report, available at: <https://docs.fcc.gov/public/attachments/DOC-373779A1.pdf>.

persistent minority of Lifeline subscribers opt for voice-only Lifeline plans” and “those subscribers still value the voice service to which they subscribe as those plans are only eligible for the lower voice reimbursement amount that is currently set at \$5.25.”⁴⁸ The Report indicates that 73% of Lifeline subscribers use less than 250 minutes of voice service per month.⁴⁹ As such, these Lifeline consumers do not need or want higher-priced alternatives. The WCB stated: “the removal of Lifeline support for voice-only services may push some Lifeline consumers into bundled plans that they are unable to afford.”⁵⁰

Following issuance of the Marketplace Report, in November 2021, the FCC delayed the phase-out of Lifeline support for voice-only service, which was previously scheduled to take effect in December 2021. The FCC said:

voice service is a popular communication channel for older Americans, and the elimination of Lifeline support for voice-only service plans may particularly hamper the ability of those unable or unwilling to adopt emerging technologies to connect to emergency services...Lifeline support for voice-only services is still necessary or desirable, given the significant percentage of Lifeline consumers who continue to prioritize voice-only service...As such, an elimination of voice-only support may force subscribers seeking voice-only services to either move to a more expensive bundled broadband plan, or forego voice service altogether.⁵¹

As a result of the FCC delaying the phase-out of Lifeline support for voice-only, the PUCO likewise delayed AT&T’s request to relinquish Eligible Telecommunications Carrier (“ETC”) status in the remainder of its Ohio service territory.⁵² These delays are further support that affordable, reliable voice-only services still serve a vital role for

⁴⁸ Marketplace Report, p. 21.

⁴⁹ Marketplace Report, p. 21.

⁵⁰ Marketplace Report, p. 23.

⁵¹ Lifeline and Link Up Modernization; Order, WC Docket No. 11-42, November 5, 2021.

⁵² Case No. 21-917-TP-UNC, Entry, November 17, 2021.

many Ohio consumers – particularly senior citizens and low-income citizens who can least afford higher-priced alternatives – and, as such, preserving and protecting BLES should be a central theme of the PUCO’s report to the Ohio Legislature.

V. RECOMMENDATIONS

HB402 requires the PUCO to provide a report to the standing committees in the House of Representatives and the Senate primarily dealing with telecommunications issues, and to the President of the Senate and the Speaker of the House of Representatives, the PUCO’s assessment of the information provided in the instant proceeding. Consumer Groups strongly recommend that the PUCO’s report should include a discussion of the data in the Staff Report *as well as* important contextual information (described herein) that will assist legislators in interpreting the Staff Report and evaluating the marketplace of BLES in a post-HB402 environment. Consumer Groups recommend that the PUCO’s report include the following findings and conclusions.

- Hundreds of thousands of Ohio customers (360,709 total customers and 234,179 residential consumers to be exact) continue to rely on BLES to communicate with friends and family and to access emergency services. Accordingly, adequate, reliable and affordable BLES service continues to be of critical importance in Ohio.
- Certain segments of the population – senior citizens, low-income, and rural Ohioans – are more dependent on BLES than others, and as such, are disproportionately impacted by BLES price increases and deteriorating service quality. Many of these consumers are captive, in the sense that voice alternatives to BLES are not available or feasible. With inflation at record levels and the price of necessities dramatically increasing, it is as important now as ever for these consumers to have access to adequate, reliable and affordable BLES.

- A majority of total line loss between March 2019 and November 2021 was attributable to *non*-BLES services; less than half (46%) of total line loss was attributable to BLES (and only 28% of total line loss was attributable to *residential* BLES). The Staff Report includes data related to total line loss (not separated by BLES and non-BLES); therefore, including these more granular facts about line loss – showing that a majority of the line loss comes from non-BLES services – in the PUCO’s report will provide important context about BLES that would not otherwise be evident to legislators.
- The average monthly ILEC line loss for the 30-month period between March 2019 and November 2021 (11,325) is significantly lower than the average monthly ILEC line loss reported by the FCC for the 31-month time period preceding HB402 (17,967). In other words, the pace at which Ohio ILECs lost lines in the years following HB402 slowed by 37% compared to preceding years. This suggests that customers in locations with attractive voice alternatives to BLES may have already migrated to them, and the remaining BLES consumers see fewer options or are more constrained in their ability to pay for them.
- Residential BLES consumers are more likely to experience price increases than are their small-business counterparts, and likewise, the price increases implemented for residential BLES are of greater magnitude compared to business BLES. In other words, residential consumers are bearing the brunt of BLES price increases.
- Price *decreases* for BLES service are virtually non-existent [of all the price changes listed in the Staff Report, only one is a de minimis price reduction for business BLES in one exchange]. This indicates that regulatory flexibility for BLES is not needed in order to respond to competition (as competition tends to drive prices down); rather, the flexibility sought, at least in part, for the purposes of raising prices.
- More data is needed besides the three minimum categories listed in HB402 in order to properly analyze the BLES marketplace. One example is line counts by exchange and by carrier. Despite submitting a public records request seeking the information, OCC was unable to access this granular data because the carriers consider it to be confidential trade secret. If available, this data could be used to analyze important aspects of post-HB402 BLES developments, such as quantifying the number of BLES customers affected by price increases, determining whether price increases are being implemented in an equitable manner among customer classes and/or demographic groups, identifying exchanges with a lack of (or fewer) alternatives to BLES, etc. Another example is customer complaint data collected by the PUCO’s call center. The complaint data could be used to supplement the line count/price data in the Staff Report to identify trouble areas or emerging problems associated with BLES (and

non-BLES) services. While OCC requested and was provided complaint data by Staff, it was challenging to interpret and analyze for reliable trends. Since Staff has this data at the ready, it should be used to its full potential for informing the Legislature about the post-HB402 environment. In sum, additional data in a usable format would produce more meaningful analyses and more comprehensive information for the PUCO and Legislature.

- Despite assurances from proponents of HB402 that it would stimulate job growth, telecommunications jobs in Ohio dropped by 13% in the following two-year period – and is forecasted to drop even more going forward. Anticipated economic benefits of HB402 have not come to fruition.
- Despite assurances from proponents of HB402 that the marketplace adequately governs quality of service, evidence collected since that time indicates severely deteriorated ILEC legacy wireline outside plant conditions as well as cuts in the technician jobs that maintain that network. There are serious concerns about the continuation of safe, reliable voice services.
- The PUCO should open an investigation to examine the condition of ILEC legacy wireline networks and facilities for the purposes of determining whether and to what extent they are currently capable of ensuring adequate and reliable BLES. Serious questions were raised about the poor condition of AT&T's network and potential safety hazards after HB402, and there is no evidence that conditions have improved since that time.

VI. CONCLUSION

As these Comments demonstrate, basic local exchange service (BLES) still plays a critical role in the Ohio telecommunications industry and is important to Ohioans. A significant number of Ohio residential consumers continue to depend on BLES, and are impacted by price increases, deteriorating quality of service, and other aspects associated with inadequate BLES protections. The PUCO should ensure that BLES protections are enforced as required by law. The PUCO should investigate service quality. Preserving and protecting BLES should be a central theme of the PUCO's report to the Ohio

Legislature. The PUCO should protect consumers by implementing Consumer Groups' consumer protection recommendations discussed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Consumer Protection Comments has been served via electronic transmission upon the following parties of record this 15th day of March 2022.

/s/ Amy Botschner O'Brien
Amy Botschner O'Brien
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Comments Consumer Protection Comments Regarding HB402 and
PUCO Staff Report by Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio
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