Testimony in Support of Senate Bill 162

By: Charles R. Moses

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I want to thank Chairman Widener and members of the Senate Energy and Public Utilities Committee for the opportunity to present testimony in support of Senate Bill 162.

My name is Charley Moses, I am president of the Ohio Telecom Association. I am here on behalf of the 41 OTA member companies to testify in support of Senate Bill 162, sponsored by State Senator Steve Buehrer. I appreciate the opportunity to talk with you about this timely and innovative legislation. Timely, because Senate Bill 162 will put into place modern regulations that recognize the diverse Ohio telecommunications landscape of today, and also, what is to come. Innovative, because Senate Bill 162 will create a similar regulatory environment for all telecommunications providers operating in Ohio, that is based on services, instead of the type of provider.

Today, there are unprecedented developments in the telecom marketplace. There are more providers, more services and more choices for consumers than ever before. Senate Bill 162 allows Ohio to continue operating in a competitive environment while including safeguards for consumer protections. This proposed legislation also enables the Public Utilities Commission of Ohio to maintain jurisdiction over the telecom industry, when and where appropriate.

OTA represents 41 traditional telecommunications service providers operating in the state. These Incumbent Local Exchange Companies, or ILEC's also range from serving a few hundred customers to millions of households across Ohio. The OTA also represents three wireless carriers and more than 100 associate members who provide goods and services to the telecommunications industry. Our member companies employ more than 20,000 Ohio citizens and contribute more than $4 billion annually to Ohio's economy through investments in telecommunications infrastructure, payroll, taxes, goods and services and philanthropy to maintain a state-of-the-art network for Ohioans.

Communications Technology Continues to Change the Way We Live

Technology has changed the way we live, work and play. It is because of innovation and investment. Telecom companies are constantly looking for new ways to transmit voice, video and data. Ohio consumers have a multitude of choices for telecommunications service from providers on many platforms. Ohio ILECs have been able to continue to innovate beyond traditional phone service to be a part of this product delivery revolution.

Now we need to take the next evolutionary policy step because progress is still needed to bring Ohio telecom regulation fully up to date and reflective of today's marketplace. Ohio's telecommunications law has not kept up with today's telecom technology. There are new technologies and new services that are driving market changes and Ohio needs regulations that reflect these changes.

Competition has forever changed telecommunications, around the world and across Ohio. If a telecom company customer becomes dissatisfied, they can choose to use a local exchange competitor, rely on a wireless carrier, make calls through the Internet or often, take advantage of a combination of all three. S.B. 162 recognizes the modern telecom options Ohioans have and eliminates unnecessary bureaucracy while keeping consumer protections for ILEC service.

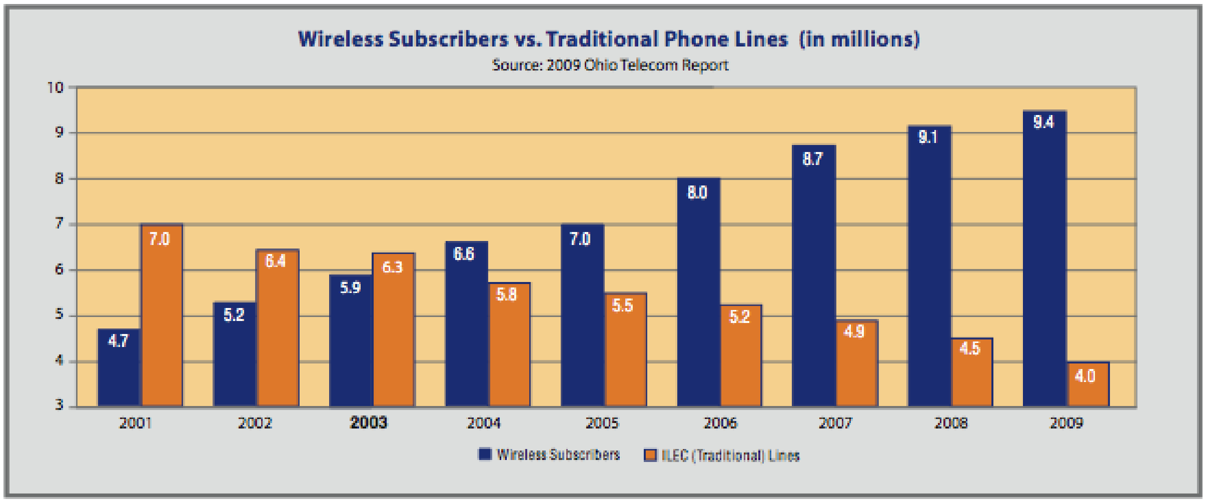
The Ohio Telecommunications Landscape Today

Telecommunications is a thriving business in the state of Ohio generating $15.4 billion annually. Many of us gathered here today can remember when there was only one choice for telecommunications service. Just as many cannot remember a time when there were not several choices for service – in fact, you may have a hard time remembering just voice service, and not voice, data, video and Internet service through a myriad of telecom providers.

I want to make it clear that while telecommunications is a $15.4 billion annual industry in Ohio, it is a crowded one as well. There are hundreds of companies who provide all types of telecom services. And increasingly, consumers are less interested in just the traditional phone line service ILECs provide.

Traditional residential phone line service is on a continuing decline. Since peaking in 2001, with 7 million access lines, Ohio's ILECs have lost 3 million lines to competition and alternative technologies. In 2008, Ohio's ILECs lost 500,000 access lines or 11 percent of their access lines.

While traditional phone lines have been rapidly declining, wireless and Internet phone service is increasing. Wireless more than doubles the customers of land line companies, both in Ohio and in the U.S. In terms of minutes of use, customer spending and total company revenues, wireless is greater than traditional landline service. The wireless industry in Ohio generates an annual revenue of $4.4 billion with 11 carriers. Wireless customers have increased 21 percent since 2005, to 9.4 million Ohio users. An estimated 15 percent of Ohio homes have now completely eliminated local phone service and rely exclusively on wireless communications.



Voice over Internet Protocol – VoIP or "Internet phone" – is also increasing in popularity, now with an estimated 20 million U.S. customers. VoIP carriers can operate from anywhere, since they use – at no cost – the local phone network to complete calls. It has all of the capabilities of traditional phone service – phone calls, long distance and calling features – and none of the regulatory burdens. In fact, VoIP is currently unregulated at the federal and state levels. While the VoIP company Vonage first held the lead in this market nationwide, cable providers now dominate this service area.

Competitive Local Exchange Carriers also provide competition in the state. These companies make up 23 percent of the landline market share today.

Regulatory requirements for CLECs approach that of ILECs, but CLECs can choose their own customers and operate in the strongest markets with no obligation to serve the entire community. This "cherry picking" business model leaves ILECs serving more high-cost, unprofitable customers.

If you calculate the total telecommunications voice market in Ohio, including ILEC, CLEC and wireless voice lines, the ILEC industry makes up only 27 percent of the market, yet it still carries the majority of obligations of regulation in Ohio. This number does not even include VoIP lines, since they are not calculated by the PUCO.

Competition is real, and it is driving telecom innovation in Ohio. By entering the video marketplace, traditional telecom providers are increasing consumer choice in the state. Ohio's telecom providers will continue to further increase innovation, investment and competition through modernized and streamlined regulations.

While ILECs can and do currently offer advanced products in addition to traditional telephone service, Ohio does not have a truly level regulatory playing field. Because ILECs must invest in greater regulatory compliance in Ohio than other telecom providers, current regulations cut into resources for reinvestment into the infrastructure supporting traditional and advanced services.

Investing in the Network

OTA member companies have a long history of investing in the network. In 2007, ILECS invested more than $1.2 billion into Ohio's telecom network as a part of our $4 billion annual investment in Ohio's economy. It is necessary for the regulatory rules to reflect the marketplace in Ohio in order for us to continue this type of investment. We are committed to maintaining the backbone of the infrastructure so that Ohio can continue to be a leader in technological advancements; however, our companies need regulatory certainty to maintain these types of investments.

The development and the maintenance of the telecommunications network In Ohio is critical to Ohio's future. The network carries all forms of communication; voice, video, internet and even wireless all travel on the network. Without the local telephone network, the Internet could not operate, wireless calls could not be completed and data could not be transmitted or received.

Our continued investment has helped us reach broadband to 95 percent of homes in Ohio. This is due to significant investment by the cable companies in Ohio, as well as the traditional telephone providers. While there is still work to be done, we are proud of what we have accomplished to date, and we are committed to continuing this effort until we have reached our goal of 100 percent broadband access In Ohio.

While telecom technologies have exploded in recent years and competition continues to increase, it’s important to understand the laws and regulations that have been enacted over the last five decades to get us to where we are today.

Ohio Telecommunications Policy Milestones

Telecommunications-specific laws began to be enacted in Ohio in 1953 but important federal and state policies have guided the way we do business. Over the past 56 years, Ohio has passed four significant pieces of telecommunications regulatory legislation. S.B. 162 signifies the next step forward in updating the regulatory framework to bring Ohio up to date with advances in the telecommunications industry of the past several years. I would like to explain how we got here, and why S.B. 162 is the next logical step for Ohio.

1984: Divesture of AT&T

On January 1, 1984, AT&T's local operations across the United States were split into seven independent Regional Bell Operating Companies (RBOCs). This breakup led to a surge of competition in the long distance telecommunications market. The FCC also established a system of access charges by which long distance networks paid the local networks both to originate and terminate a call.

1989: H.B. 563

Ohio opened the state telecom market to local telephone service competition in 1989 with the passage of H.B. 563, which provided the Public Utilities Commission of Ohio the authority to establish the first alternative regulation for telecommunications services under state law. While this legislation was necessary, once implemented it was not effective.

Following the PUCO's adoption of guidelines to implement H.B. 563 in 1993, the Commission adopted the first alternative regulation plan by Ameritech Ohio – 1994's "Advantage Ohio" plan. H.B. 563 also established an Ohio regulatory practice of developing alternative regulation for Ohio telecom that is reflected in successive legislation.

1996 Telecommunications Act

The Telecommunications Act of 1996 was the first major overhaul of the United State telecommunications law in nearly 62 years. It was the first bill to recognize advanced services and made a significant distinction between providers of telecommunications services and information services. Congress also forced local telephone companies to share their lines with competitors at regulated rates. If the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to the market to provide its services.

2001: Elective Alternative Regulation Plan

The PUCO developed a solution under the law that adopted off-the-shelf rules, establishing a collaborative mechanism for companies under an alternative regulation plan. This plan allowed for price flexibility for competitive services, caped basic rates to protect consumers, and also mandated that companies entering alternative regulations had to meet a certain standard of infrastructure investment for large and small companies.

2005: H.B. 218

H.B. 218, in 2005, permitted alternative regulation of Basic Local Exchange Service (BLES), for the first time permitting competition to be used as a test for alternative regulation for BLES in Ohio. The Commission recognized under H.B. 218 the importance of having a competitive test before allowing for pricing flexibility for BLES. PUCO adopted BLES alternative regulation rules in 2006.

OHIO TELECOM OTA ASSOCIATION

2007: S.B. 117

S.B. 117, in 2007, reformed Ohio's video franchising system to accelerate competition for video service among all telecom providers regardless of delivery platform. S.B. 117 spurred substantial additional advanced network infrastructure investment by Ohio telecom companies.

Currently, there are 21 cable television companies in Ohio and two Direct Broadcast Satellite (DBS) providers that make up 97 percent of the video market share in the state. More than 70 percent of the ILECs in Ohio now offer subscription video service. A new video franchising law in Ohio resulted in more providers entering the market and has already generate more than $350 million in new infrastructure spending.

Telecom Reform around the Country

More than 20 states across the country have adopted new telecom reform laws. Modernizing telecom regulations will encourage investment in new technologies and create level playing fields for all providers. Most recently, North Carolina, Florida and Alabama passed legislation deregulating basic, local phone service. Even our neighboring states, Michigan and Indiana – have made significant changes in their telecom laws.

In recent years, we have seen an explosion in new technologies in the telecom marketplace. Changes are taking place at such a rapid pace, it is a challenge for policy makers to modernize telecom laws. In order for Ohio to remain a national leader, our state cannot ignore the importance of updating telecom laws.

What Senate Bill 162 Does for Ohio

We believe this legislation represents a balance between competition and regulation with appropriate consumer protection standards while maintaining authority for the PUCO to continue to oversee the telecom industry. There is a need for streamlined laws that remove unnecessary regulation while protecting consumers.

Overall, S.B. 162 addresses four important issues facing the telecom industry:

1. Modernizes regulation for Ohio telephone companies.
2. Provides the PUCO with the ability to regulate with the appropriate authority.
3. Demonstrates the industry's commitment to protecting consumers by:
   - providing basic, regulated service;
   - continuing COLR;
   - expanding the number of lifeline customers; and
   - continuing the current complaint process for consumers.
4. Promotes innovation and investment in the telecom industry.

The PUCO will continue to have authority and oversight over landline companies in the new regulatory framework S.B. 162 will enable. Telephone companies will continue to work under PUCO guidance to maintain all critical consumer access and service quality guarantees to ensure that high-quality basic phone service will always be available to consumers who want it. Life-line service will continue to be offered through ILECs to low-income Ohioans who cannot otherwise afford to maintain access to emergency 9-1-1 so that the public health and safety system is available to all. S.B. 162 expands this protection by placing this in statute.

Furthermore, our member companies will remain the “carrier of last resort” to ensure that Basic Local Exchange Service is extended as requested by any consumer within the service area, on a reasonable and non-discriminatory basis. S.B. 162 removes the mandatory burden from ILECs to extend new facilities to provide service regardless of whether the consumer wants it or not, where BLES or functionally equivalent service, other than wireless service, is available from another provider.

S.B. 162 recognizes the many ways telecom service can be successfully extended to consumers and no longer forces ILECs to use only one kind of infrastructure to serve demand. Under this bill, ILECs would be able to harness the innovation that has already led to such a robust and competitive telecom environment in the state, leveraging technology to provide smart and effective telecom solutions.

PUCO will continue its oversight function under S.B. 162 to serve as the avenue for resolution of consumer complaints, so that consumers who are dissatisfied with their telephone service can continue to work through PUCO to have their concerns heard and addressed when a third party is needed to reach a solution.

Senate Bill 162 will modernize Ohio’s telecom regulatory framework. Provisions of the bill reflect the competitive telecommunications marketplace that exists today. The bill replaces current regulation which treats different carriers differently.

Complying with this outdated regulation, when competition in the telecom industry creates the same end of quality and cost-conscious service, takes time and money. Those same resources could be applied to investment in infrastructure. Investments in this infrastructure are made by ILECS, but so telecom competitors benefit from investments. S.B. 162 would encourage investment by freeing up these resources.

S.B. 162 will also stimulate investment in innovation. Our members are committed to maintaining the landline infrastructure that is the backbone of the telecommunications industry, but also need and want an environment that encourages competitive ILEC telecom offerings, as ILEC competitors have enjoyed for years.

Most notably, S.B. 162 gets us one step closer to creating a unified Ohio telecom environment that provides similar regulation for similar services, which are reasonable for all providers and that promotes high customer satisfaction through competitive excellence. It will provide a new environment of balance for Ohio telecommunications in law and regulation that addresses all business and consumer interests in an effective and comprehensive way.

Conclusion

Ohio's telecommunications landscape is changing dramatically, and it's changing for the better. Updating Ohio's telecom regulatory environment will provide even more voice and data access service choices for Ohio consumers through increased competition and will protect continued investment in the Ohio telecommunications network.

To remain competitive, Ohio needs to foster a culture of innovation that results in the best telecommunications services, driven by the latest technological advances – regardless of the service provider, and the service being provided. S.B. 162 will help accomplish these goals.

Telecommunications service competition is already creating a benefit for Ohio consumers, and encouraging even more vibrant competition and updating Ohio's telecommunications rules is the logical next step.

Thank you for your consideration of this important initiative.

Glossary of terms

ILEC – Incumbent Local Exchange Carrier. The dedicated phone service provider for a specific Ohio geographic region.

BLES – Basic Local Exchange Service. Local phone service provided through an ILEC or CLEC.

CLEC – Competitive Local Exchange Carrier. Traditional landline service provider that can pick and choose customers and markets of operation.

VoIP – Voice over Internet Protocol, or "Internet phone." This technology uses broadband cable to carry phone calls, connecting through the traditional telecom infrastructure.

Video franchising reform – Change in Ohio law through S.B. 117 permitting traditional phone companies to provide video service.

COLR -Carrier of last resort – Legal requirement for Ohio's ILECs to extend service as requested when no other landline option is available.

Sources

Data was collected from websites and research reports of the following organizations:

- CTIA (formerly the Cellular Telecommunications Industry Association)
- Connect Ohio
- Cronin Communications (a national telecom research and consulting firm)
- Federal Communications Commission
- National Cable and Telecommunications Association
- National Exchange Carriers Association
- Ohio Cable Television Association
- Ohio Telecom Association
- Public Utilities Commission of Ohio