

**BEFORE THE PENNSYLVANIA
HOUSE CONSUMER AFFAIRS COMMITTEE**

Testimony of

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**Regarding
House Bill 1608**

**Harrisburg, PA
November 21, 2013**

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**Chairman Godshall, Chairman Daley
And Members of the House Consumer Affairs Committee**

My name is Tanya McCloskey. I am the Acting Consumer Advocate for the Office of Consumer Advocate and have worked at the Office of Consumer Advocate since 1987. Thank you for inviting me to give comments before this Committee regarding House Bill 1608.

Last winter I appeared before this Committee to provide information on the regulated utility industry in Pennsylvania. In the portion of that testimony regarding telecommunications service, I testified about the significant changes in the regulatory framework that have occurred since the initial passage of Chapter 30 of the Public Utility Code in 1993 and its reenactment in 2004. As I discussed in that testimony, it was my view that the competition in the telecommunications industry facilitated by Chapter 30 has benefitted many Pennsylvania consumers, particularly those who can afford to buy bundled packages of services. But as I pointed out, even with the advances in telecommunications service in recent decades there are still some parts of Pennsylvania where consumers have little choice but to rely on the basic telephone service provided by their local telephone company. Also, parts of Pennsylvania depend on the legislatively mandated broadband requirements that are part of Chapter 30. It was the combination of competition and legislated protections and mandates that has made Chapter 30 a success.

My primary concern for consumers regarding telecommunications service in Pennsylvania remains the assurance of universal service at reasonable and affordable rates for every Pennsylvanian who wishes to have such service. The General Assembly has recognized this goal in its legislative efforts regarding telecommunications service. The first sentence of Chapter 30 that was added to the Pennsylvania Public Utility Code in 1993 states that: “The

General Assembly finds and declares that it is the policy of this Commonwealth to: (1) Maintain universal telecommunications service at affordable rates...” When Chapter 30 was re-enacted in Act 183 of 2004, this exact same language appeared in the second Declaration of Policy.

Universal service has also been the bedrock principle of our national telecommunications policy since the passage of the Federal Communications Act of 1934, and this policy was extended and strengthened in the federal Telecommunications Act of 1996.

Why has universal service been such a fundamental telecommunications policy for many decades? One reason is because the more people who are connected to the telephone network, the more **everyone** benefits from the network. Universal telephone service benefits every telephone user, rich or poor, urban or rural. Universal service is not just important so that the parents and grandparents in Elk County can call their family and businesses in Pittsburgh; it is important so that people and businesses in Pittsburgh can connect with residents in Elk County. Universal service is not just important so that low-income parents can call their child’s doctor, but so that the doctor can call back the parents to let them know their child’s medical test results. Universal service provides a reasonable level of access to affordable telecommunications services for all Pennsylvanians, including those who live in our most rural and sparsely populated communities, where the cost of providing service to each individual is highest. Universal telephone service is one of the forces that helps bind our Commonwealth together.

While competition has greatly benefitted many Pennsylvania consumers, particularly consumers who can afford to buy packages of voice, video, and data services, in some parts of Pennsylvania, there is little or no competition for stand-alone basic telephone service on which many Pennsylvanians continue to rely. That is why, when our Pennsylvania

telecommunications framework was re-enacted in 2004, the General Assembly maintained a carefully drawn category of “protected” services, including basic residential service, that continue to be subject to a higher level of Commission scrutiny and regulatory protection.

Another major goal of both the original Chapter 30 in 1993 and its reenactment in 2004 was the accelerated deployment of high speed broadband services throughout Pennsylvania. While broadband is not a part of basic universal service, the General Assembly clearly found that the **availability** of broadband service was a matter of vital importance to every urban, suburban and rural community in the Commonwealth. Act 183 of 2004 offered local exchange companies the option of accelerating the universal deployment of broadband service from 2015 to 2008, in exchange for the ability to increase non-competitive service revenues. Interestingly, each of the nearly three dozen small rural local exchange companies in Pennsylvania took this accelerated option. This means that, by the end of 2008, all of our smallest and most rural telephone companies were committed to providing their customers with the ability to purchase some form of high-speed Internet service. This typically has been digital subscriber line (DSL) service at a speed of at least 1.544 megabits per second. The only companies that did not accept the 2008 deployment option were Verizon PA (formerly Bell Atlantic), Verizon North (formerly GTE North), CenturyLink (formerly Sprint) and Windstream (formerly ALLTEL Pennsylvania). The two Verizon Companies continued with their prior Chapter 30 commitment to complete deployment by 2015, while CenturyLink and Windstream selected the 2013 deployment option.

This brings me to House Bill 1608 and the further modifications to Chapter 30 that are proposed in this Bill. The changes proposed in House Bill 1608 raise significant concerns for me about the continuation of universal telecommunications service in Pennsylvania

and the continued care and maintenance of the Public Switched Telephone Network (PSTN) upon which all Pennsylvanians depend, regardless of the voice technology that they utilize. Regardless whether a consumer has chosen VOIP or wireless only service, their calls ultimately reach consumers connected to the Public Switched Telephone Network.

In my view, this Bill could lead to higher rates and reduced service quality for telephone service throughout Pennsylvania, could leave many rural Pennsylvanians without access to affordable basic voice service, and could possibly leave areas of Pennsylvania with no access to wireline service at all. While my concerns with HB 1608 are many, for this testimony, I would like to address several broad issues raised by HB 1608 that impact the provisions of universal service throughout Pennsylvania including the elimination of what is often referred to as the carrier of last resort obligation for basic wireline voice service, the potential impact on the Pennsylvania Universal Service Fund, the potential impact on Lifeline Service for low income customers, the impact on quality of service, and the impacts on other consumer protections.

The Impact on Universal Service

Carrier of last resort obligations (COLR), the requirement that local telephone companies provide service to all households in their service area, have ensured that affordable and reliable telephone service is available to all households and businesses in Pennsylvania. One of my most significant concerns with HB 1608 is that it would eliminate the carrier of last resort obligation, exposing customers to the risk of the unavailability of wireline voice service and the loss of affordable, basic telephone service. Affordable wireline service continues to be important to Pennsylvanians. According to the most recent data available, for year-end 2011, 76.6% of

Pennsylvania households continue to subscribe to wireline voice telephone service.¹

Furthermore, in areas outside of Pennsylvania's two most populous counties, the percentage of households continuing to purchase wireline services is even higher, with 79.1% of households buying wireline voice telephone services.² This second statistic is critically important to consideration of HB 1608. According to the Center for Rural Pennsylvania, 48 out of the 67 counties in Pennsylvania are considered rural counties, with 3.5 million, or 27% of Pennsylvanians residing in these rural counties.

While it is true that some of the households that continue to purchase wireline voice services have selected service from a source other than the incumbent local exchange company (ILEC), such as a cable provider, the desirability of wireline voice services is still clearly illustrated by these statistics. And in rural Pennsylvania, many cable providers have not built a wireline network throughout these communities. More fundamentally, though, cable providers are under no statutory obligation to serve in any area with either voice service or internet access. Only the ILEC has that obligation.

House Bill 1608 opens the door for the elimination of basic wireline voice service in all of Pennsylvania by eliminating the carrier of last resort obligation either when an exchange is declared competitive, or automatically in 2018. Section 3016(c)(3)(ii). House Bill 1608 also removes all authority from the Commission over the abandonment of competitive service to any customer. Section 3019(c)(1)(v). Even in areas where there is no competition, House Bill 1608 would allow local exchange carriers to provide "basic calling service" using "any technology."

¹ National Health Interview Survey data as reported in "Wireless Substitution: State-level Estimates From the National Health Interview Survey, 2010–2011". Stephen J. Blumberg, Julian V. Luke, Nadarajasundaram Ganesh, Michael E. Davern, and Michel H. Boudreaux, p. 2. <http://www.cdc.gov/nchs/data/nhsr/nhsr061.pdf>

² *Id.* Table 2, p. 8.

So what does this mean. My most pressing concern is that consumers will lose the ability to purchase wireline voice service, particularly in rural and hard to serve areas. One need look no further than New York and New Jersey to see the potential consequences of these provisions. While initially, wireline service may remain for densely populated and profitable areas and even in rural areas, the consequences of these provisions will be felt first after the next tornado, major storm or hurricane that damages the wireline network. By way of example, following Super Storm Sandy, Verizon determined that it would not replace its wireline network on Fire Island in New York and would instead offer customers Voice Link, a service provisioned over a wireless network. Verizon still needed the approval of the New York Public Service Commission to abandon the wireline service and replace it with the wireless Voice Link service. Under HB 1608 in similar circumstances in Pennsylvania, the Commission might have no authority to consider the ramifications of the abandonment of the wireline network since the Commission would lose authority over the abandonment of such services immediately in non-rural areas and by 2016 in rural areas when service in those areas could be deemed “competitive.” In New York, a public airing of the concerns with Voice Link and the harm of losing the wireline network led Verizon to change its plans and commit to rebuild a combined wireline and fiber network. Over time of course, it may not just be in areas impacted by storms where such abandonment occurs. Areas where it is difficult or costly to maintain the Public Switched Telephone Network may also see degradation and eventual abandonment, leaving customers with only unregulated options.

My concern does not stop there. Even if wireline service remains, under the provisions of the Bill, an ILEC is allowed to nominate exchanges for “competitive” classification either based on population density alone (where that density exceeds 300 persons per square

mile), or based on a “competitive test.” As a result of being declared “competitive,” the basic telephone service provided in the exchange is no longer provided at prices established pursuant to the Public Utility Code, *i.e.*, the prices would be deregulated. This “competitive test” consists of showing that “two or more alternative providers” operate in an exchange, a standard that will all but ensure that all exchanges in Pennsylvania could be deregulated. Under this test, whether an alternative provider serves two customers or two thousand customers has no bearing on the assessment of the degree of competition facing the ILEC, or the level of choice facing consumers. Similarly, whether the alternative providers’ service can reach other customers in the exchange makes no difference. If ILECs could count affiliates and joint venture partners as alternative providers, these provisions of the Bill would allow ILECs to exempt many, if not all, of their exchanges from regulatory oversight, and allow price increases that are unconstrained by true competition.

The consequences of the removal of the carrier of last resort obligation poses unacceptable risks and harms, leaving customers with fewer choices, reduced competition, lower service quality, and potentially with either no broadband or more expensive LTE-based broadband. Wireless services, either mobile or fixed, are by definition, not regulated services in Pennsylvania and wireless providers have no obligation to serve in any area or to serve any customer. The services are not guaranteed to work anywhere, especially indoors, a concern that is more pronounced in rural areas. Imagine the impact on the security of a household if household members had no telephone service while they were indoors. It is also critically important to keep in mind that numerous technologies rely on the wireline PSTN to operate. The wireline PTSN provides an affordable platform for credit card processing, alarm systems, basic telemedicine and personal monitoring, among other services. Wireless service, though, is either

incompatible with these technologies, or would require consumers to make costly service upgrades. Finally, wireless service can often be less reliable than wireline services as most cell sites do not have reliable back up power.

The unregulated pricing of wireless service also raises significant concerns about the continuing affordability of basic telephone service. Wireless carriers' bundling practices require customers to buy a package of services at a higher cost than stand-alone basic telephone service. For broadband service, data caps have emerged as a means for carriers to increase prices even further. Broadband prices in the United States are already among the highest in the developed world.³ The promise of Chapter 30 for the availability of broadband service to all Pennsylvanians could fall by the wayside.

While competition can provide benefits to consumers, and competition under our existing Chapter 30 has worked to help provide these benefits, the proposal to eliminate the carrier of last resort obligation would disrupt the balance that has been struck and that has worked well in Pennsylvania. The record to date with the approach outlined in House Bill 1608 in other states is limited, but there are certainly some red flags that have been raised for consumers. For example, in California where basic rates were deregulated in 2006, the state's largest local exchange provider raised rates by 115% for flat rate calling and 183% for measured rate calling.⁴ Service quality can also suffer due to a reduction in regulatory oversight. Carrier of last resort obligations were lifted for Verizon in Virginia in 2011, and Verizon Virginia

³ See, OECD Broadband Portal, Table 4C, "Range of broadband prices per megabit per second of advertised speed (Sept. 2012)", which shows U.S. broadband prices higher than 21 of the 34 OECD nations. <http://www.oecd.org/sti/broadband/oecdbroadbandportal.htm#prices> . See also, the recent New American Foundation report "The Cost of Connectivity 2013 Data Release: A comparison of high-speed Internet prices in 24 cities around the world," October 2013. That report concludes: "The results showed that, in comparison to their international peers, Americans in major cities such as New York, Los Angeles, and Washington, DC are paying higher prices for slower Internet service." http://newamerica.net/publications/policy/the_cost_of_connectivity_2013

⁴ "AT&T rates skyrocket since deregulation," *San Francisco Chronicle*, January 18, 2013. <http://www.sfgate.com/technology/dotcommentary/article/AT-amp-T-rates-skyrocket-since-deregulation-4204388.php>

experienced extended network outages in that state following the 2012 Derecho storm. The Virginia Commission found, in its subsequent investigation of Verizon practices in the post deregulation environment, that Verizon failed to follow its own internal procedures associated with the testing and maintenance of back-up power systems.⁵

As I mentioned earlier, critically important are the fundamental health and safety issues raised by the changes that are likely to occur under this Bill. Reliable voice service availability in one's home provides a critical pathway for access to emergency services, as well as alarm systems and personal and health monitoring devices. As mentioned above, many of these systems are incompatible with wireless technology. In addition, the problems of inferior battery back-up and inferior location identification are significant. As recently noted by the California Public Utilities Commission in its consideration of a technology-neutral definition of basic service, the ability of a consumer to receive service within their premises is critical:

We disagree with parties' claims that customers do not require a voice grade connection within their homes as long as they have access to the mobility advantage offered by wireless. This argument ignores the essential nature of basic service as a residentially-based service. While we recognize that wireless phones offer mobility advantages, those advantages do not negate the essential basic service need to be able to communicate within the customer's own residence.⁶

The availability of basic telephone service indoors, in one's home, is a key issue that must not be overlooked. There are times when it may not be practical to leave the safety of one's home to make a telephone call. By enabling the migration to wireless-only alternatives, the Bill will eliminate the critical safety element of telephone service in the home for some Pennsylvania households.

⁵ Impact of the June 2012 Derecho on Communications Networks and Services, Report and Recommendations. A Report of the Public Safety and Homeland Security Bureau, Federal Communications Commission, January 2013, p. 10. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-318331A1.pdf

⁶ California Public Utilities Commission, D.12-12-038, December 24, 2012, pp. 21-22.

House Bill 1608 could have a substantial negative effect on affordable basic telephone service for Pennsylvania consumers. The elimination of the carrier of last resort obligation, along with the removal of the Commission's authority over abandonment of competitive services and a "competitive test" that virtually guarantees that most exchanges can be deemed either competitive on the effective date of the Bill or on January 1, 2016, would place in jeopardy the goal of universal telecommunications service that has been the hallmark policy of this Commonwealth.

Impact On The Pennsylvania Universal Service Fund

Another significant concern with House Bill 1608 is its limitation on, and potential elimination of, the Pennsylvania Universal Service Fund. The Pennsylvania Universal Service Fund was established to help rural ILECs provide service at affordable rates. These rural ILEC service territories are those that overall are hardest and most costly to serve. The Pennsylvania Universal Service Fund helps to ensure that the Public Switched Telephone Network is extended and maintained throughout each company's service territory to meet the needs of all customers. The Pennsylvania Universal Service Fund has been an important component of assuring the continuation of affordable basic service in rural Pennsylvania. I am concerned that the structure of Section 3019(b.1) of HB 1608 could lead to the end of the Pennsylvania Universal Service Fund and its support for rural telecommunications service.

To ensure affordable, universal service in Pennsylvania, as well as to ensure the maintenance of the PSTN in rural Pennsylvania that all carriers use –whether wireless, VOIP, wireline – the Pennsylvania Universal Service Fund should be continued and strengthened. As I mentioned earlier, all telecommunications users benefit by being able to reach rural customers who are connected to the Public Switched Telephone Network. The more people who are

connected to the network, the more all users of all telecommunications service will benefit. Pennsylvania has long recognized this important principle and the special need to apply the principle to rural consumers who are more difficult and costly to serve.

The potential elimination of the Pennsylvania Universal Service Fund after five years also raises significant questions about the future operational condition of our rural telecommunications companies. These companies have served in all parts of their service territory, no matter how remote or difficult to reach, to ensure that the goal of universal service could be realized for Pennsylvania. With the potential loss of support of the Pennsylvania Universal Service Fund, I think we must seriously address the question of the impact on the customers of these rural companies.

Impact On The Lifeline Program

I would also like to address the impact of House Bill 1608 on Lifeline Service, a service provided to low income households. Currently, ILECs such as Verizon provide a service, funded primarily through the federal Lifeline Program, that assists low income customers in affording and maintaining basic service. Verizon has two programs, Lifeline 100 and Lifeline 135.

In what may appear at first blush to be a small change to Chapter 30 by House Bill 1608, the Lifeline provision in Section 3019(f)(6) is amended. Under the existing provision, the Commission cannot require an eligible telecommunication carrier such as Verizon to introduce a **new** Lifeline service if the discount is not fully subsidized by the Federal Universal Service Program. The existing Section 3016(f)(6) provision assures that all eligible customers may continue to receive reduced cost voice service with federal support and Verizon's neediest customers continue to have a second choice, Verizon's Lifeline 100. Lifeline 100 pairs the

federal discount, currently \$9.25 per month, with an additional \$2.50 discount paid with Verizon-supplied funds. Only Verizon's neediest customers may receive the extra Lifeline 100 discount to make voice service more affordable.

In House Bill 1608, the Section 3019(f)(6) language has been changed to remove the reference to "new" Lifeline service discounts and replaced it with "a" Lifeline service discount. The consequence of this change is that on the effective date of this Act, Verizon could immediately eliminate its Lifeline 100 program and no one could do anything about it. As a result, the cost of voice service for Verizon's roughly 20,000 Lifeline 100 customers would increase. Rather than limit Lifeline service, we should be looking to at least maintain the programs that we have and to potentially strengthen the provision of Lifeline service in Pennsylvania.

Impact on Quality of Service

As I have already discussed, the loss of the carrier of last resort obligation and the potential elimination of the Pennsylvania Universal Service Fund can have significant repercussions for the maintenance of the Public Switched Telephone Network. The support provided to the ILECs serving the most difficult and hard to reach areas of Pennsylvania contributes to the reliable service offered by our Rural ILECs. Compounding the issues regarding the carrier of last resort obligation and the Pennsylvania Universal Service Fund, is the limitation in House Bill 1608 on the Commission's authority over quality of service. Section 3019(b)(2). House Bill 1608 constrains the Commission's powers as to quality of service issues and then limits this reduced authority to only the consideration of "protected services." Under the Bill, only Pennsylvania consumers that reside in an exchange that has not been declared competitive may obtain protected service. Upon enactment, however, all non-rural exchanges

can be unilaterally declared to be competitive exchanges and have no protected consumer services. Section 3016(c)(1). By January 1, 2016, virtually all exchanges could be classified as competitive exchanges and would have no protected consumer services. Thus the Commission will have no quality of service oversight relating to telephone service to consumers.⁷

Under HB 1608, a residential customer in a competitive exchange would be unable to complain to the Commission if the ILEC delays restoration of service or provides a reduced level of service. The Commission also could not consider the safety, adequacy, reliability or privacy of basic voice service once an exchange is deemed competitive. The Commission also could not consider billing complaints or complaints about the terms and conditions of service in a competitive exchange.

The restriction and eventual elimination of the Commission's oversight on quality of service will leave customers with no meaningful forum to address concerns with the performance of their telephone service, their billing service, or the customer service they are being provided. This loss of authority may also mask the potential consequences of failures to maintain and preserve the PSTN.

Impact on Other Consumer Protections

Provisions of House Bill 1608 raise additional concerns with the loss of consumer protections in other areas. For example, the provisions regarding the approval of mergers or acquisitions unduly limit the time for review of these complex transactions and severely limit the Commission's authority to impose conditions on the approval of the sale or merger that might be necessary to protect the public or to ensure that the merger or acquisition meets the legal standards. Sections 3015(e) and (f) also limit the Commission's authority to require reporting of important information. Most notably, after hundreds of millions of dollars have been spent on

⁷ The only "protected" service that remains is switched access service which is not a consumer service.

the deployment of broadband under Chapter 30, the Commission will not even be able to receive reports to determine the continued availability of the broadband network and service.

I must address in more detail here, though, one provision that appears to add a protection for consumers but is extremely difficult if not impossible to carry out. The provision of Section 3016(c)(4) clearly demonstrates the type of vulnerability and potential problems that could occur. Section 3016(c)(4) describes a scenario where a consumer residing in a “competitive” exchange has no service provider available other than the local exchange company. Ignoring for a moment the outcome that this customer in a “competitive” exchange has only one choice of provider, House Bill 1608 specifies that in order to get service from the local exchange company, the consumer must establish that “service is not available to the customer’s location from another provider.” Section 3016(c)(4)(i). Such a requirement places the customer in the position of bearing the burden of proof regarding a matter that is technologically complex. Just how would a consumer prove this negative, that there is no alternative provider? Would the consumer have to provide affidavits from every cable provider or wireless carrier that they are not providing service in the customer’s location? Would the consumer have to hire technical experts to demonstrate that wireless signal strength was insufficient at their residence? Regardless of the specific test, it can quickly be seen that this task can be expensive and prohibitive for consumers.

Even if the consumer could meet this difficult burden of proof, the remedy available to the customer would be at the discretion of the local exchange carrier and would allow the local exchange carrier to use any technology and to charge any price to the customer. Section 3016(c)(4)(ii). The local exchange carrier could also bundle basic calling service with other services at its discretion thus resulting in an expensive bundle which might include services

that the customer has no interest in, no need for, or cannot afford. These provisions offer little assistance to consumers who could lose access to the only entity that has the obligation to provide them with basic telephone service.

Conclusion

In conclusion, I am concerned that House Bill 1608 could have a pronounced and negative impact on Pennsylvania consumers. Basic telephone service is a key component of the social and economic lives of Pennsylvanians. While alternative technologies are available, those technologies are not available to all consumers. Where alternatives such as wireless or cable service are available, wireless services do not provide the same functions as wireline service, and the bundling practices of cable voice providers, and the costs of cable voice service, may be prohibitive for many Pennsylvanians. House Bill 1608 would allow for local exchange carriers to disinvest in their networks, and withdraw wireline services from areas that they no longer want to serve. The Bill could disadvantage consumers that continue to rely on basic wireline services and it could threaten the universal broadband availability that we spent the last 20 years trying to accomplish in Pennsylvania.

Thank you for allowing me to testify here today. I look forward to any questions you may have and to continuing discussions on the future of telecommunications service in Pennsylvania.