

Prepared Testimony of  
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*before the*

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Chairman Godshall, Chairman Daley, members of the Committee, I appreciate the opportunity to speak with you today about House Bill 1608 - the Telecommunications Market Competition Act. I am Robert Powelson, Chairman of the Pennsylvania Public Utility Commission (PUC or Commission). The PUC has an interest in this legislation because of our role as the regulator for intrastate local, toll, and access telephone providers. Although the PUC does not have jurisdiction over certain broadband, wireless, or cable television retail services, we are interested in how the Commonwealth's telecommunications industry operates as a whole because we want to ensure that customers have reasonable telephone rates and a variety of telecommunications options.

It is important that we are here discussing these issues given the dramatic transformation the telecommunications market has undergone in recent years. The communications options for consumers have expanded beyond traditional voice-only service offered by incumbent telephone companies to include a variety of new service options and new service providers. Yet, in Pennsylvania, our regulatory approach has failed to keep pace with this ever-changing communications marketplace.

This is problematic because some of our regulations are outdated and are hindering the regulated entities from competing equally with unregulated service providers. As a consequence, not all of Pennsylvania's telecommunications customers have been able to fully realize the benefits of a competitive marketplace, with the potentially lower rates and innovative product offerings that such a market provides. Given the new reality of

the industry, the PUC agrees that the existing telecommunications regulations need to be changed.

HB 1608 proposes to address this problem by allowing certain geographic areas in Pennsylvania to be designated competitive, either upon declaration by the carrier or upon Commission approval. A competitive designation would relieve the carrier of certain regulatory obligations in the relevant geographic area and would allow for market-based rates in that area. This dual regulatory regime created by HB 1608 would level the playing field for Local Exchange Carriers allowing them to compete with fewer regulatory burdens in the geographic areas where telecommunications customers already have an array of choices.

The PUC supports the goals and intent behind HB 1608, which are to enhance competition and create a more balanced marketplace for Local Exchange Carriers. The PUC believes that increased competition in the telecommunications market will benefit customers by potentially keeping prices low and spurring innovation, as evidenced by the numerous product offerings and consumer savings present in Pennsylvania's competitive electricity market. It is also important to note that Pennsylvania would not be the first state to undertake wholesale changes to its telecommunications laws. Florida, Texas, Indiana, and Washington have all taken steps to successfully deregulate their incumbent telecommunications industry.

Opponents of the bill argue that HB 1608 will result in a reduced quality of service, or perhaps even a lack of telephone service, for some Pennsylvanians. However, I am

confident these doomsday scenarios will not occur. With the appropriate consumer protections in place, this legislation has the potential to greatly benefit Pennsylvanians, not harm them. Plus, it is important to remember that the PUC will continue to fully regulate the telecommunications industry in the rural and underserved areas of the areas of the state where consumers do not have many choices. The bill will have the largest impact in areas where customers have a variety of telephone carriers to choose from, and in those regions, competition will keep prices reflective of the market and will promote high service quality. I will discuss each of these issues in greater detail below.

### **Evolution of Telecommunications Industry**

First, in order to understand why it is necessary to revise Pennsylvania's current telecommunications laws, it is important to understand how the existing regulations came into being. As you know, for most of the past century, the U.S. telecommunications industry has been subject to monopoly regulation. However, in 1984, the Justice Department's antitrust lawsuit led to the breakup of the AT&T monopoly into seven, independent Regional Bell Operating Companies. These regional entities provided local phone service and continued to be regulated as monopolies.

In 1996, Congress passed the Telecommunications Act (TA-96), which transformed the telecommunications industry by opening up the local telephone service market to competition. The law's main purpose was to stimulate competition and it did so by permitting Competitive Local Exchange Carriers (CLEC) to compete with the already established Incumbent Local Exchange Carriers (ILEC). While these statutory

changes opened the door to competition, Local Exchange Carriers in Pennsylvania were still subject to rate regulation, quality of service requirements, and policies designed to ensure access by all Pennsylvanians to affordable telephone service (otherwise known as universal service).

The directives set forth in TA-96, along with Pennsylvania's own telecommunications laws set forth in Chapter 30 (enacted in 1993), have provided the framework for the Commonwealth's telecommunications industry for the past twenty years. The only major regulatory change during that time was Act 183 of 2004, which amended Chapter 30 to require 100 percent deployment of broadband throughout the Commonwealth by 2015, and provided additional regulatory rate relief to incumbent Local Exchange Carriers.

### **Changing Telecommunications Landscape**

The market structure created by TA-96 and Chapter 30 worked well for Pennsylvanians when consumers relied primarily on landline telephones and dial-up Internet access. However, in recent years, the way people communicate has changed dramatically. While customers used to call their local telephone company for phone service, they now have an array of options. Customers can call a television or Internet provider and get phone service bundled into their monthly plan, or they can opt for no wireline service at all, and rely solely on cell phone service.

Recent data shows that the average American no longer relies exclusively, or even primarily, on traditional wireline service. The Center for Disease Control has released some preliminary results from its National Health Interview Survey for 2012 and has found that 38 percent of American households no longer have a landline telephone in their houses and rely exclusively upon wireless phones.<sup>1</sup> Moreover, approximately 16 percent of American households received all, or almost all, calls on wireless telephones despite also having a landline telephone. Together, these statistics mean that more than half of all American households either have no landline service at all or have a landline service but rely almost exclusively on wireless. This trend is likely to continue, given that more than 60 percent of Americans ages 25 to 29 have eliminated landline service altogether, compared to 38 percent of all American adults who have done the same.

### **Need for Regulatory Parity**

This changing marketplace signals a new reality for Local Exchange Carriers. Traditional phone service is no longer the sole focus of the telecommunications industry. Today's customers also want innovation, flexibility, and a variety of service options. As a result, in recent years, Local Exchange Carriers have faced severe competition from providers that can offer these choices, including wireless providers, cable companies that

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<sup>1</sup> Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2012 (<http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201306.pdf>).

provide facilities-based VoIP voice service,<sup>2</sup> and non-facilities-based providers like Vonage or Magic Jack that also provide a broadband-based voice service.

The complicating factor is that these other carriers are not regulated in the same way Local Exchange Carriers are regulated. Wireless carriers, as defined under the Code, are not public utilities, and so do not fall under the PUC's jurisdiction. Moreover, Pennsylvania's VoIP Freedom Act expressly precludes the PUC from regulating retail VoIP telephone service of the nature provided by cable companies and other Local Exchange Carriers. Thus, while Local Exchange Carriers remain legally bound to offer PUC-approved formula rates and must adjudicate customer complaints at the PUC (which can be an expensive and time consuming process, both for the Commission and the companies), their competitors are free from any such regulatory obligations. These unregulated competitors benefit from the ability to reduce prices, offer cutting-edge technologies, and nimbly adapt to the ever-changing marketplace.

HB 1608 attempts to remedy this by updating Chapter 30 to reflect how technology has changed the telecommunications industry and level the playing field between Local Exchange Carriers and their unregulated competitors. For the regions of Pennsylvania where multiple telecommunications providers compete for customers, HB 1608 creates a regulatory landscape that relies largely on competitive forces to ensure quality of service and to check prices. The PUC agrees that updates to the regulatory scheme are necessary and appropriate to reflect existing market realities that an increasing number of

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<sup>2</sup> Voice over Internet Protocol (VoIP or Voice over IP) service is defined in the VoIP Freedom Act, 73 Pa.C.S. §§ 2251.1 *et seq.*

Pennsylvanians (a) have access to multiple alternative service providers for voice service; and (b) are exercising these options to receive voice service from alternative providers, many of whom are unregulated by the PUC. HB 1608 will move Local Exchange Carriers closer to regulatory parity with other providers of voice communications whose retail services are not subject to PUC jurisdiction.

In this way, the PUC views HB 1608 as continuing the trend cited by the General Assembly in its 2004 Chapter 30 amendments to reduce the regulatory obligations imposed on traditionally regulated companies “to levels more consistent with those imposed upon competing alternative service providers.”<sup>3</sup> The PUC supports a modernization of the regulatory environment for Local Exchange Carriers in areas where telecommunications customers have a choice between multiple service providers. The General Assembly recognized in Pennsylvania’s VoIP Freedom Act that an updated regulatory environment is a prerequisite for significant capital investment in the telecommunications marketplace in Pennsylvania.

### **Benefits of a Competitive Market**

Additional capital investment is just one of the ways that increased competition will benefit Pennsylvania’s telecommunications customers. The changes embodied in HB 1608 will allow competition to continue and provide additional choices for customers, while possibly lowering rates for basic phone service. The impact of competition on price is evident based on the amount of local revenue increases that Incumbent Local

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<sup>3</sup> 66 Pa. C.S. § 3011(13).

Exchange Carriers have currently banked, which totals slightly more than \$23 million. In other words, due in large part to competitive pressures, these carriers have elected not to implement around \$23 million in allowable local revenue increases that they are legally entitled to implement in accordance with current Chapter 30 provisions and PUC orders.

Another benefit of competition is that it forces businesses to quickly adapt to consumer demands and changing market conditions. No industry better illustrates the positive effects of competition than the sectors of the communications industry that are not subject to traditional monopoly-style regulation. Telecom businesses are constantly rolling out new, innovative technologies, such as high-speed broadband Internet, VoIP, on-demand video, smart phones, and apps.

HB 1608 will provide Local Exchange Carriers with similar flexibility in terms of the technology used to serve customers. This flexibility opens the door for Local Exchange Carriers to bring new and evolving technologies to communities and promotes investment in infrastructure and reliable advanced technologies throughout Pennsylvania, including in rural areas of the state. Such investment is critical to ensuring that Pennsylvanians are not left behind as the telecommunications industry moves forward.

However, the benefits of competition can only be realized when there is a level playing field among competitors. If government regulations, such as those currently in existence in Pennsylvania, create an unbalanced marketplace, competition will not continue to thrive and include more players. In view of this, the PUC supports revising Chapter 30 so that our laws evolve to keep up with the changes in the industry. HB 1608

sets forth a glide path for regulators to continue to support competition in Pennsylvania's telecommunications industry.

### **Need for Consumer Protections**

At the same time, the PUC recognizes the fundamental importance of maintaining consumer protections in the new marketplace envisioned by HB 1608. Without question, the PUC supports maintaining jurisdiction over 911 service in competitive exchanges, just as the PUC did under VoIP Freedom Act. Under that law, the PUC does not regulate IP-enabled retail voice service, but retained authority regarding the provision of 911 service. The PUC stands ready to retain the same or similar 911 jurisdiction under HB 1608 in all of Pennsylvania's telephone exchanges.

Additionally, it is essential to ensure the Local Exchange Carriers' broadband deployment obligations under Chapter 30 remain in place and are unchanged by HB 1608. To date, Pennsylvania has almost accomplished 100 percent broadband deployment, with two midsized companies completing their obligations by December 31, 2013, and the Verizon companies fulfilling their obligations by the same date in 2015. The PUC opposes any statute or statutory language that would jeopardize this progress.

With respect to service quality or other complaints by customers, the PUC expects that eventually the market in the competitive exchanges will resolve any such issues by allowing customers to switch to another telecommunications provider if they are unhappy with one provider's service. However, it may be necessary to maintain PUC jurisdiction

over retail customer complaints in competitive exchanges for some period of time. As the bill is currently written, there would be little or no PUC jurisdiction to address consumers' billing and service issues in competitive exchanges, while in other areas of Pennsylvania, the PUC would retain jurisdiction because of the lack of alternative service providers. Once the provisions of HB 1608 have been fully realized, competitive forces may be sufficient to allow less regulatory obligations in all areas of Pennsylvania.

Additionally, the PUC supports including in the legislation an obligation that each Local Exchange Carrier establish a consumer "Bill of Rights" to clearly set forth the protections available to customers in competitive exchanges. The PUC has seen success with consumer Bills of Rights in the restructured electricity market and believes it would be a valuable "best practice" to adopt here.

With respect to the choice of technology HB 1608 provides Local Exchange Carriers, the PUC supports this flexibility and has never been in the business of mandating certain technologies. However, it is important to include in the legislation the requirement that the technology chosen by the Local Exchange Carriers must work, in that it must deliver reliable voice service, especially the ability to provide critical 911 service when needed. Moreover, when Local Exchange Carriers replace existing facilities, the new technology must be functionally equivalent to the existing equipment.

Other provisions the PUC would like to see incorporated into the bill are maintaining a cap on local rate increases in areas without competition and the grandfathering applicable to customers currently receiving basic calling service from an

incumbent Local Exchange Carrier. The grandfathering provision in HB 1608 permits customers to keep their basic calling service for a time certain or until the customer disconnects whichever is sooner). The PUC would like to see that provision clarified to refer to “stand-alone” service only. This would prevent existing stand-alone basic service customers from being forced into a service bundle with additional voice, Internet, or video services that they do not want in order to maintain basic voice service or dial tone.

The dual regulatory regime proposed by HB 1608 may need to be better defined so that the PUC, consumers, and the telecommunications industry are clear as to their rights and obligations if a service or other problems occur. The PUC fully understands that the new marketplace created by HB 1608 will undoubtedly require us to work through some transitional issues, particularly those related to the handling of complaints. However, it cannot be overlooked that there are important safeguards in the bill to ensure all Pennsylvanians, including those in rural areas, will continue to have reliable wireline service available to them. Even in the competitive exchanges, if there are doughnut holes where competition is lacking, the Local Exchange Carriers have agreed to continue to be the Carrier of Last Resort (COLR). These consumer protections, along with those outlined above, will ensure that the only impacts that customers will notice as a result of this legislation will be positive ones.

## **Universal Service Fund**

One final issue to address is HB 1608's treatment of the Pennsylvania Universal Service Fund. The bill essentially preserves the status quo for the Universal Service Fund until January 1, 2019. Prior to that time, the PUC would be responsible for launching an investigation to determine the future of the fund. In particular, the PUC would examine whether the fund should continue, and if so, whether it should be reformed. The PUC does not object to the bill's treatment of the Universal Service Fund and stands ready to conduct such an investigation.

## **Conclusion**

Thank you again for inviting me to speak today. Given the tremendous changes in the telecommunications industry in recent years, I think it is important that legislators and regulators are coming together to discuss these issues. The PUC supports the goals and intent behind the revisions proposed in HB 1608. It is essential that Pennsylvania's telecommunications laws evolve to keep pace with this ever-changing industry and to ensure that consumers have access to the best communications services available. So long as the appropriate consumer protections are in place, HB 1608 has the potential to greatly improve the telecommunications industry in Pennsylvania.

I welcome the opportunity to answer any questions you may have.