



31 Years of Protecting Kentucky's Environment

Senate Bill 3 / House Bill 152: 2015 Version of AT&T's Deregulation Bill Fails To Assure Continued Access To Reliable Basic Phone Service For All Kentuckians

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Today, Kentucky law:

- assures **all** Kentuckians access to “basic local exchange service” on a stand-alone basis. Basic local service means unlimited calls within the local exchange area, 911 emergency service, the ability to interconnect with other exchanges, directory assistance, operator services, relay services, and a directory listing.

- Empowers the Public Service Commission to require phone utilities to provide these services and to require that performance objectives for quality of service meet standards set by the Commission.

- Requires Incumbent Local Exchange Carriers (ILECs) such as AT&T, Windstream, and Cincinnati Bell to act as “Carriers of Last Resort (COLR),” providing basic stand-alone phone service to any customer requesting service.

If the AT&T Bill, Senate Bill 3 and House Bill 152, passes, on its effective date,

- AT&T, Windstream (where it is the ILEC), and Cincinnati Bell could **immediately** stop offering stand-alone basic telephone service to **new and existing customers** in any phone exchange with over 15,000 housing units – Bowling Green, Georgetown, Henderson, Hopkinsville, Frankfort, Louisville, Owensboro, Paducah, Richmond, Boone County, Independence, Elizabethtown, Lexington, Nicholasville, and London.

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- The obligation to provide basic phone service, or for that matter **any** service, to all requesting customers on a non-discriminatory basis (known as the “Carrier of Last Resort” or COLR obligation) would be completely eliminated for those communities, so that no customer would have the right to basic or any other service from these incumbent utilities.

- The Public Service Commission would lose jurisdiction to require compliance regarding the availability, reliability, and quality of telephone service for these utilities.

If SB 3 or House Bill 152 passes, for smaller exchanges where AT&T, Windstream, or Cincinnati Bell are the incumbent phone utility,

- No new request for basic local service through a landline would have to be honored unless the utility had “installed landline facilities to provide basic local exchange service.” You might be told that “Granny gets to keep her landline,” but the bill limits that obligation to provide new landline service to only those locations where the **initial** landline was installed to provide “basic local exchange service” rather than other services. BellSouth, and not AT&T, installed most of those lines in AT&T’s service area, so restoration of service would not be assured. A more clear statement would be “a location where there is no current landline.”
- For new requests for service where there is no existing landline, less reliable and less functional wireless “voice” service could be offered by the utility or an affiliate, and could be bundled with other services that the customer might not need or be able to afford. No aspect of the quality, availability, or reliability of the “voice service” would be regulated by the Public Service Commission, despite the fact that, according to disclaimers by the wireless voice service, the service is not equivalent to wireline service in quality, functionality, and reliability.
- For all other service requests, (including those where a landline exists), the utility can at its option, offer the requesting customer an internet protocol (IP) based or wireless service. If the requesting customer does not order either, the Commission would retain jurisdiction to enforce the utility’s basic service obligation with respect to that customer at that location.
- If the customer requests an IP-enabled service or wireless service, the customer has only 60 days in which to request to switch back to the regulated wireline basic local service, and if not, the right to receive basic stand-alone local service would be lost.

Throughout the Commonwealth, the Public Service Commission would lose regulatory power to investigate and resolve consumer complaints regarding wireless and broadband services.

Current regulation of basic local exchange service reflects a judgment in 2006 by the General Assembly that, while other telephony services could be deregulated, basic local exchange service was an essential service that should remain regulated and available to all customers on a stand-alone basis, without the necessity of a contract commitment.

In the Senate Committee hearing last year, AT&T testified that the elimination of the basic local service obligation would affect only 1.3% of the customers in their 11 urban exchanges. Assuming that the 1.3% is typical of the number of units in Windstream and Cincinnati Bell's over-15,000 unit exchanges, over 11,000 households that today depend on stand-alone basic local service whose quality is assured by PSC regulation, would lose that right, and could be forced to choose between no service, and taking more expensive bundled services that they cannot afford and may not want or need.

In rural areas, no new homes or businesses could insist on reliable wireline service, and instead could be offered less reliable wireless service that may not support effective 911, medical monitoring, fax, or alarm monitoring services. And if an existing customer switches to wireless and doesn't switch back in 30 days, that existing right to reinstate landline service would be lost.

There **is** a transition occurring from the "time-division multiplexed (TDM) circuit-switched network, to an all Internet Protocol (IP) based network. The twisted copper wire network that has provided highly reliable, accessible, affordable telephone access for so long, is transitioning into a network that still relies on much of that same copper wire, but may also carry calls through coaxial cable, fiber, and wireless as the physical infrastructure of telecommunications.

The Federal Communications Commission issued an Order January 30, 2014 that responded to AT&T's petition asking to be able to conduct trial experiments in certain phone exchanges where only IP-based services would be provided, and the FCC has provided that opportunity for AT&T and others to propose trials in identified exchanges "in order to speed market-driven technological transitions and innovations by preserving the core statutory values as codified by Congress – public safety, ubiquitous and affordable access, competition, and consumer protection – that exist today." Those trials are ongoing.

Our concern that for new or relocating rural customers, less functional and less reliable wireless home service will be offered instead of reliable landline service, is not theoretical, and has been borne out recently in Washington D.C. Section 214(a) of the Telecommunications Act prohibits a carrier from discontinuing, reducing, or impairing service to "a community, or part of a community" without prior Commission authorization. The FCC issuing a Declaratory Ruling on November 25, 2014 seeking to protect consumers by clarifying that a "discontinuance, reduction, or impairment of a service" that would need FCC approval under Section 214 is a "functional" test, so that, for example, if a carrier like AT&T offered a wireless voice service that was incompatible with the customer's fax machine, or third party alarm or medical monitoring, that would be considered to fall under Section 214 as a discontinuance, reduction, or impairment of a service needing FCC approval.

The U.S. Telecom Association, of which AT&T is a member, has assailed the FCC Declaratory Ruling, arguing that the Declaratory Ruling should be withdrawn because “service” only includes what is offered by the telecom company and does not include any obligation to support third-party services such as medical monitoring, home alarms, fax machines, etc.

SB 3 and HB 152 fail to protect those core values that the FCC has reiterated should remain constant despite the digital transition – it ends universal access in urban exchanges and weakens it in rural areas. It risks public safety in rural areas where wireless services are used to replace wireline. It weakens consumer protection by eliminating PSC regulatory jurisdiction, and strips the most vulnerable of Kentuckians of their now-guaranteed access to reliable, stand-alone phone service.

While proponents of deregulation claim that “Kentucky still has rotary dial laws in a smartphone world,” there is **nothing** in current Kentucky law that inhibits the transition from the “publicly switched telephone network” to an IP-based network. **Nothing** in the current regulation of basic local phone service that hampers that transition, requires investment in “old” technology, or diverts resources from other investments. The Public Service Commission does **not** mandate that basic local phone service be delivered through the TDM network, or which prevents use of IP-enabled communications. The PSC **only** insists that the functionality and reliability standards be met. AT&T has yet to identify any “rotary dial rules” that interfere with delivery of stand-alone basic phone service through IP-enabled technology. This is instead about what the industry calls “upselling” of highly lucrative additional bells and whistles, features and data plans, and of ending the carrier of last resort obligation to customers who simply want, or can only afford, the basics.

This isn’t about new investment being withheld by AT&T from Kentucky because the law that AT&T authored in 2006 requiring the continued delivery of stand-alone service. AT&T has complained that having to provide basic stand-alone phone service under PSC supervision creates an environment in Kentucky that discourages investment. Yet notwithstanding the obligation, AT&T claims to have “aggressively” invested in Kentucky in recent years due to the business-friendly environment here.

In June 2010, AT&T praised Kentucky leaders for creating “an environment that encourages companies to invest aggressively in Kentucky.” In June 2011, AT&T announced that it had invested more than \$525 million in Kentucky “over the past three years” and that “the company will continue to invest aggressively in” Kentucky as part of a \$19-billion nationwide investment in 2011. In March 2012, AT&T said that “thanks to the vision and business-friendly approach of the General Assembly, Kentucky has a strong regulatory environment for telecom infrastructure investment.” AT&T also expressed hope that the General Assembly “will build upon their past

success and update our telecom laws to encourage even more capital investment across the Commonwealth.”

AT&T invested more than \$95 billion nationwide during 2007-2011 and \$20 billion in 2011 alone. That investment of roughly \$1.1 billion from 2007 – 2011 in Kentucky, which AT&T called “aggressive,” amounted to 1.1% of the total national AT&T capital investment over that period. The announced 2013-2015 investment for Kentucky will continue that investment trend as a percentage of national investment, and could be marginally higher or lower. Current investment is still on the same pace of \$200 million per year that it has been for several years. Eliminating the right to stand-alone, reliable, local exchange phone service does not appear likely to materially change AT&T investment in their wireless and wirelines networks in Kentucky.

This is indeed a time of transition in communications, and it is essential that as this transition occurs, the basic principles of universal service, network reliability, competition, consumer protection, and public safety that have driven our communications policy for over 100 years be maintained and consumers protected.

To summarize KRC’s concerns:

First, the loss of universal access to basic, stand-alone phone service in larger exchanges, for new and existing customers, which will disproportionately affect low and fixed-income customers. Ending the carrier of last resort obligation could leave customers without access to affordable, reliable basic services, including 911.

Second, replacement of highly-reliable landline service with less reliable and functional wireless service.

For all existing and new service in larger exchanges, and at locations in smaller exchanges where there is no current landline, the bill allows the utility **at its discretion** to offer wireless “voice” service, such as the AT&T Home Phone Service, instead of basic local exchange landline service. Access to stand-alone basic local service would be ended for such locations, as it would for those electing an IP-enabled or wireless service who do not request restoration of wireline service within 30 days after election.

While the functionality and reliability of wireless service will no doubt improve over time, such service is **not** comparable in quality and functionality to wireline service. This is acknowledged by the disclaimer provided on AT&T’s own website, which noted that:

“AT&T’s wireless services are not equivalent to wireline Internet.” Section 4.1. “We do not guarantee you uninterrupted service or coverage. We cannot assure you that if you place a 911

call you will be found.” Section 4.1. “AT&T does not represent that the WHP [Wireless Home Phone] Service will be equivalent to landline service.

The uproar caused by Verizon’s attempt to substitute wireless home service rather than repair landlines in some areas after Hurricane Sandy, and similar problems on Fire Island, underscore that currently, quality, functionality, and reliability of wireless phones are not comparable to landlines. A homeowner who elects to take wireless service may not face within the first 30 days, those conditions that underscore the limitations of wireless service – inability to find the home in emergencies, inability to support medical monitoring, incompatibility with alarm services, or natural event that causes loss of electric power in which a landline would continue to function but a more limited backup power source for cellular communications would not.

Sixty days is an insufficient period of time for a consumer to determine whether a wireless or IP-enabled service is comparable in quality and reliability. To protect the consumer, the limits in functionality should be prominently and intelligibly conveyed to the consumer, not buried in a 20-page 8-point typed consumer agreement whose verbiage would make even a lawyer’s head spin. Consumers must be made aware at the onset of the differences in functionality of the wireless service from the wireline service in such areas as ability to support alarm systems and medical monitoring, fax capability, reliability during natural disasters, etc.

Irrespective of the technology used, customers should not be faced with a decline in the current standards of reliability, quality, and functionality of basic local exchange service that are the hallmark of the regulated utilities.

Third, because nothing in the bill advances the extension of high-speed wired broadband in rural areas.

Kentucky has a significant digital divide between urban and rural areas, with high-speed internet access available in many urban markets but with little or no access in rural areas. Nothing in this bill advances the extension of broadband into rural areas; instead, allowing new service requests in rural areas to be met with “wireless voice” service could result in rural users paying significantly more for more limited wireless broadband access than urban users.

In 2006, supporters of deregulating all other phone services offered by AT&T and other electing providers claimed that freeing them from regulation would result in 100% broadband access by 2007. As then, there is nothing here that would obligate AT&T and other companies to complete the build out of wired high speed broadband access.

Conclusion

Our telephone network is the result of deliberate policies and a regulatory framework that has made access by telephone a universal right. We are used to highly reliable service that works in normal conditions and through many natural disasters due to landline phones being independently powered. We rely on our ability to seamlessly call others without a thought as to whether the other user subscribes to the same carrier, and regardless of where they each live.

KRC believes that the shift from traditional time-division multiplexing (TDM) technology to Internet protocol (IP) technology neither requires nor justifies the abandonment of COLR obligations and the requirement to provide universal access to basic, reliable, phone service. Instead, we should be broadening our definition of “basic local phone service” to require ubiquitous access to broadband. For as has been observed, “neither the make-up of the physical plant nor the protocols used to transport data on the network diminish consumers’ need for basic service—if anything, advances and new efficiencies in technologies may justify raising the standard for what is considered basic service.”

The FCC is developing rules to provide AT&T and others a path forward that is responsible and will allow for data-driven decisions on the rules for IP-based communications and consumer protection, and how to translate the core values in the digital age. The FCC Order, Declaratory Ruling and 2014 proposed rulemaking reaffirms that those core values that Senate Bill 3 and House Bill 152 view as disposable – universal access to basic reliable phone service and consumer protection – are not obsolete and should be preserved through this transition.

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