

# **Public Utilities Commission of Ohio**

**Marianne Townsend  
Telecommunications Chief**

Select Committee on Telecommunications  
Regulatory Reform

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Chairman Stautberg, Chairman Seitz and members of the Select Committee on Telecommunications Regulatory Reform, I am Marianne Townsend, Chief of the Telecommunications Division in the Utilities Department of the Public Utilities Commission of Ohio (Commission). I am here today to provide testimony in accordance with Section 5 of Substitute Senate Bill 162 (SB 162) was passed by the 128<sup>th</sup> General Assembly and became effective September 13, 2010. Pursuant to SB 162's requirements, the focus of my testimony today will address the impact of SB 162 on telephone company rates, telephone company quality of service and Lifeline program customers.

## **Background and Scope**

SB 162 embodies the latest chapter in the evolution of telecommunications regulation in Ohio. From the Commission's first alternative regulation order in 1985 to House Bill 563 establishing Chapter 4927 of the Revised Code in 1988 to legislative updates of Chapter 4927 in 2001 and 2005, which broadened and extended alternative regulation, SB 162 represents the culmination of these efforts. Recognizing the changing telecommunications landscape, SB 162 modernized Ohio's telecommunications laws to usher in a new era of telecommunications regulation.

Today, more than two years since the passage of SB 162, we are in a position to begin to evaluate the effects of this bill. To do so, it is important at the outset to distinguish what SB 162 was intended to do from what it was not intended to do. SB 162 was not intended to deregulate telecommunications services in Ohio, but rather, it was intended to provide for a different form of regulation that recognizes the importance of the marketplace and competition on both the carriers' service offerings and their behaviors. Under the provisions of SB 162, basic local exchange service, or BLES, which is dial tone only service, remains regulated providing an important safety net for subscribers. Further, all incumbent local telephone companies are required, as carriers of last resort, to make BLES available to all persons or entities in their respective service areas on a reasonable and non-discriminatory basis. Companies may seek a waiver of this requirement from the Commission on a case-by-case basis.

While ensuring that customers continue to have access to basic telephone service, SB 162 also leveled the playing field between traditionally regulated telephone companies and unregulated entities, such as cable companies and VoIP providers, with regard to non-basic services and packages, enabling carriers to more fairly compete in the provision of these offerings. Under this approach, the market primarily governs the behavior of the telephone companies.

If the market fails in this respect, however, the Commission may intervene through its application of SB 162's consumer protection provisions, which are similar in nature to those found in the Consumer Sales Practices Act.

Additionally, Commission authority remained unchanged following the enactment of SB 162 with regard to wholesale telecommunications services, intercarrier compensation, access services and reform, pole attachments, rights of way, payphone access lines and carrier-to-carrier complaints.

### **Telephone Service Rates**

While the rates that telephone companies may assess for non-basic services and packages are now market-driven and outside the direct purview of the PUCO, BLES continues to be rate regulated. Nonetheless, SB 162 provided for BLES pricing flexibility as well. This flexibility, though, is not new, as the 2005 amendments to Chapter 4927 extended alternative regulation to BLES. SB 162, however, amended the test that telephone companies must meet to enjoy this pricing flexibility. To increase BLES rates, companies must demonstrate that the exchange for which the increase is requested is "competitive" as defined by statute. Section 4927.12, Revised Code, finds that an exchange is competitive when two or more alternative providers offering a service to compete with BLES exist. Further, following SB 162, there is a presumption that companies have met the competitive test when they request BLES pricing flexibility from the Commission. In other words, the companies do not bear the burden of demonstrating that they have met the competitive test, but rather, the burden is placed upon the Commission to demonstrate that they have not met the test.

If the Commission does not demonstrate that a company failed to meet its competitive test within a given exchange, the Commission must grant BLES pricing flexibility for that exchange. Pursuant to the provisions of SB 162, such companies may increase their BLES rates by no more than \$1.25 above their existing approved monthly rates during any 12-month period. Companies that elect not to increase their BLES rates are not permitted to "bank" their increases for a future increase that exceeds \$1.25. In other words, BLES increases are available on a use-it-or-lose-it basis. In addition to these service rates, telephone companies must file tariffs with the Commission for BLES installation and reconnection charges as well as for BLES terms and conditions.

There are 736 telephone exchanges in Ohio. Of these, 192 exchanges belong to AT&T, the largest incumbent local telephone company in the state. The remaining 544 exchanges are

divided among Ohio's other four large incumbent companies<sup>1</sup> and Ohio's 36 small incumbent telephone companies.<sup>2</sup> Of the 36 small incumbent companies, eight are not-for-profit companies who, unlike the for-profit telephone companies, are not restricted in the amount that they may increase their BLES offerings. The not-for-profit companies serve 9 of the 544 non-AT&T exchanges.

Excluding AT&T exchanges and not-for-profit exchanges, there are presently 363 telephone exchanges that have BLES pricing flexibility. Most of these exchanges have been approved for BLES pricing flexibility after the enactment of SB 162. Following the bill's September 13, 2010, effective date through February 24<sup>th</sup> of this year, 296 exchanges that are not AT&T or not-for-profit exchanges, representing eight companies, have been granted BLES pricing flexibility. Of the 296 exchanges approved for BLES pricing flexibility, the vast majority – 223 – belong to Frontier North. Customers in 15 of the 296 exchanges have seen an increase in residential rates, with customers in nine of these 15 exchanges seeing an increase in business rates as well. For residential customers, these increases represent a 13.2 to 26.8 percent increase in their monthly bills. From the bill's effective date through February 24<sup>th</sup>, however, six exchanges, all from the same company,<sup>3</sup> have seen a **decrease** in BLES rates for business customers.

In the nine exchanges served by Ohio's eight not-for-profit small telephone companies, only three exchanges experienced increases in their residential BLES rates and each only one time. Two of these instances appear to be directly attributable to changes in the FCC's universal service rules for high-cost support.

As I indicated earlier, AT&T is Ohio's largest local telephone company with approximately 1.24 million subscribers as of December, 2012. Prior to the effective date of SB 162 in September 2010, AT&T had filed 10 BLES cases seeking BLES pricing flexibility and had received Commission approval in 176 of its 192 exchanges, but had not increased residential BLES rates in any of those approved exchanges. The remaining 16 exchanges were pending in a single BLES case at the time SB 162 went into effect. Three of these exchanges had previously been denied BLES pricing flexibility. AT&T subsequently withdrew this application and filed a new BLES case under the SB 162 criteria. These exchanges were deemed competitive giving AT&T BLES pricing flexibility in all 192 of its exchanges.

What conclusions can be drawn with regard to SB 162's impact on BLES rates in Ohio?

First, SB 162 has streamlined the application and hearing process for BLES pricing.

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<sup>1</sup> Cincinnati Bell, Frontier North, CenturyLink and Windstream

<sup>2</sup> See Appendix C, telephone exchange map

<sup>3</sup> CenturyLink

Second, following the implementation of SB 162, the larger telephone companies appear more willing to increase their BLES rates, particularly their residential rates. Prior to the bill's effective date, only 12 of the 67 non-AT&T exchanges with BLES pricing flexibility – slightly less than 18 percent – saw increases in both residential and business BLES rates. Typically, BLES rates for one class of service were not increased without also increasing rates for the other class of service. Following SB 162, nine of the 296 non-AT&T exchanges – three percent – that obtained BLES pricing flexibility saw increases in both classes of service, while 15 of the 296 exchanges – five percent – saw increases in residential rates only. It is worth noting that the 223 Frontier exchanges have only been approved for pricing flexibility of business BLES rates. Consequently, of the 73 remaining exchanges in which residential rates may be increased, 15, or roughly 20 percent, have seen an increase in residential BLES rates. Before the passage of SB 162, AT&T had not raised residential BLES rates in any of its exchanges and had only raised business BLES rates in a very small percentage of its exchanges even though it had BLES pricing flexibility in the vast majority of those exchanges. Following SB 162, AT&T has increased BLES rates in all of its exchanges for both classes of service.

Finally, even with the ease of obtaining BLES pricing flexibility that SB 162 affords, many of Ohio's small telephone companies remain reluctant to increase their BLES rates – rates that are often artificially low – even when faced with dwindling federal high cost support and access support. Between the bill's implementation and February 24<sup>th</sup> of this year, only six of Ohio's 36 small and not-for-profit companies sought BLES pricing flexibility even as the FCC takes steps to reduce high cost and access support, which have been the two main sources of revenue for small carriers.

## **Consumer Protection**

In addition to changing the process by which incumbent local telephone companies may obtain BLES pricing flexibility, SB 162 also streamlined consumer protections for Ohio's telephone customers. Consumer safeguards applicable to all local service offerings were previously set forth in the Commission's rules as the Minimum Telephone Service Standards or MTSS. With the passage of SB 162 and subsequently adopted Commission rules, the MTSS was replaced with a streamlined approach that relies heavily on the market to govern the behavior of Ohio's telephone companies. While SB 162 removed PUCO regulatory oversight for non-BLES customers, certain protections remain for BLES subscribers. Particularly,

service must be available, adequate and reliable;

installation must be completed within five business days; service outages must be cleared and service-affecting problems must be repaired within 72 hours;

service may not be disconnected for nonpayment earlier than 14 days after the bill due date and then no earlier than seven days after notice of disconnection is provided to the customer;

customers disconnected for non-payment must be reconnected within one business days following payment of the past due amount; and,

disconnected customers must be afforded access to 9-1-1 emergency dialing for 14 days following disconnection;

These protections are the service quality standards the Commission considers for customer complaint purposes. Additionally, the Commission may not order credits except in response to a customer complaint. Previously, credits were automatic. Under SB 162, customers are required to file a complaint to receive credit for a service outage or missed appointment.

The Commission's Service Monitoring and Enforcement Department, or SMED, operates a hotline to handle utility customer complaints and inquiries. The hotline receives calls from BLES customers who retain certain consumer protections under SB 162 as well as non-BLES customers for whom the market is intended to provide protection. Since the effective date of the bill in September 2010, through January of this year, the number of contacts received by SMED regarding telephone issues has shown an upward trend. Upward trends can be seen for many specific contact codes used by SMED, including "quality of customer service," "billing disputes," "billing inquiries," and "disconnection issues." Other contact codes – "misleading information/materials" and "repair service" – show a downward contact trend while contacts regarding "out of service" issues remained relatively constant during this period of time. Additionally, the number of contacts received by SMED regarding three of the five large telephone companies has also shown an upward trend while the number of contacts for the remaining two large telephone companies has shown a downward contact trend since SB 162 went into effect.

What does this mean? To answer this question, it is helpful to understand the SMED process. Each contact received by SMED is not necessarily a complaint. Many contacts involve customer education regarding a customer's particular utility matter. For those that do involve customer complaints, many can be resolved by the utilities if escalated to the appropriate person or department within each company. In such cases, customers are referred to company hotline numbers established to receive referrals from Commission staff. Some issues cannot be

resolved at this level prompting a call back to the Commission hotline. Other issues may warrant immediate staff attention. In customer call back situations as well as those requiring immediate staff attention, an informal staff investigation is opened.

From September 13, 2010, through the end of the January 2013, SMED received 9,929 telecom-related contacts for the contact codes I mentioned earlier. Of these, 3,513 were opened as informal investigations. By way of contrast, for an equal number of days prior to the effective date of SB 162 – April 23, 2008 through September 12, 2010 – SMED received 10,315 telecom-related contacts with 3,499 opened as informal investigations. Contacts regarding the five large ILECS<sup>4</sup> collectively decreased by approximately one percent following SB 162. Four of the large ILECS saw contact decreases in the range of 11 percent to 18 percent,<sup>5</sup> while one large ILEC saw a contact increase of about seven percent.<sup>6</sup> Of these contacts, there was less than a one percent increase in the number that was opened as investigations when compared to same period of time immediately prior to SB 162. The number of contacts opened as informal investigations decreased by 1.1 percent, 4.7 percent and 8.2 percent for three of the five large ILECS, while the remaining two large ILECs saw 15.6 percent and 16 percent increases in the number of post-162 investigations. It should be noted, however, that, depending upon the historical numbers of contacts received regarding Ohio's large ILECs and the resulting number of informal investigations that were opened, the percentage increases that I have discussed do not necessarily correspond to a large increase in contacts or investigations in terms of real numbers. In other words, a noticeable percentage increase in contacts or investigations does not necessarily correlate to a large number of additional contacts or investigations. From this data, I believe that we may conclude that the streamlined consumer protections of SB 162 have yielded mixed results.

## **Lifeline Service**

Lifeline service, as I am sure you know, is a federally funded subsidy that is supported through the federal Universal Service Fund and provides telephone assistance to qualifying low-income subscribers. While SB 162 included a section devoted to Lifeline service, its impact on Ohio's Lifeline service offerings and customers is not easily quantified.

Historically, Lifeline service was only offered to low-income subscribers by the incumbent local telephone company and, with limited exceptions, the discount was only applied to BLES. With the passage of SB 162, incumbent local telephone companies were permitted to offer non-BLES

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<sup>4</sup> AT&T, Cincinnati Bell, Frontier North, CenturyLink and Windstream

<sup>5</sup> Cincinnati Bell, Frontier North, CenturyLink and Windstream

<sup>6</sup> AT&T

services and service packages and bundles to Lifeline customers who would receive the Lifeline discount off of the standard rate of the service or package. Following SB 162 and in accordance with requirements established by the Federal Communications Commission, the Commission passed its own Lifeline rule extending many of the Lifeline provisions applicable to local incumbent telephone companies to competitive carriers wishing to offer Lifeline service. These changes to Lifeline service in Ohio opened the door for both incumbent carriers and competitive carriers to offer bundles and packages to Lifeline eligible subscribers, making available services and offerings previously unavailable to these customers such as three-way calling and call waiting as well as non-regulated services such as broadband and video.

As SB 162 was being considered and was put into effect, and following a significant grant of forbearance by the FCC, wireless Lifeline service providers began offering their services in Ohio. Offering non-traditional Lifeline services that follow business models that allow them to, in many cases, offer free service to qualifying customers, these wireless Lifeline service providers quickly gained a significant share of Ohio's Lifeline market. Today, as you might expect, in Ohio there are more subscribers of wireless Lifeline service offerings than there are subscribers of traditional wireline Lifeline offerings. This confluence of events makes it difficult to evaluate the effectiveness of SB 162 in making bundles and packages available to Lifeline customers as many of the customers who would likely have taken advantage of these new offerings have opted instead for a wireless Lifeline offering. Nonetheless, we do know that SB 162 allows for some parity between these new, nontraditional Lifeline offerings and traditional wireline Lifeline service for those Lifeline subscribers who wish to maintain wireline service to their home. Without SB 162, these customers would have to subscribe to a wireless service offering to receive the features they now enjoy with their wireline Lifeline service.

## **Broadband Deployment**

SB 162 does not empower the Commission with any authority over broadband service. SB 162, in fact, continues the hands-off approach to broadband traditionally applied in Ohio. Consequently, it is difficult to draw a direct correlation between the implementation of SB 162 and the growth of broadband service in Ohio. Nonetheless, I do believe that SB 162 has enhanced an environment in which broadband deployment and adoption has flourished. SB 162 ensures minimal regulatory obligations on new services and technologies utilizing broadband to promote competition and innovation within the communications industry. This approach appears to be working. As of fourth quarter 2012, broadband availability in Ohio was

at 97.55 percent<sup>7</sup> with 134 broadband providers operating within the state.<sup>8</sup> In less than a year (2011 to 2012), 23,300 homes received access or upgraded broadband service with 20,419 of those homes being in the rural high-cost Appalachia area known to have a large broadband availability gap.<sup>9</sup> Under the framework of SB 162, service providers, many of whom are rural ILECs, have been able to invest in their networks to meet FCC broadband deployment objectives. Broadband is not limited to ILEC service offerings only, but rather is growing across multiple platforms and technologies. Cable and mobile wireless technologies saw increases in the number of served households of one percent and five percent, respectively, from October 2010 through September 2012, while DSL saw a slight increase of less than one percent for the same time period.<sup>10</sup> While the percentages may not seem large, they represent thousands of previously unserved households. The minimal obligations imposed by SB 162 have not proven to be a disadvantage to any provider. To the contrary, SB 162 has fostered innovation and deployment of advanced telecommunications services<sup>11</sup> among the providers operating in the state while ensuring that no consumer is left in need for basic telephone services.

For a more detailed explanation, I would recommend that this committee work with Connect Ohio to discuss the continued broadband expansion in Ohio.

Chairman Stautberg, Chairman Seitz and members of the Select Committee, thank you for allowing me to provide testimony regarding the impacts of SB 162. I will be happy to answer any questions you may have.

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<sup>7</sup> Connect Ohio, *Connected: Connect Ohio Quarterly* (Winter 2012). Retrieved February 20, 2013 from Connect Ohio website [http://connectohio.org/sites/default/files/publication-newsletters/connected\\_winter\\_2012.pdf](http://connectohio.org/sites/default/files/publication-newsletters/connected_winter_2012.pdf). Connect Ohio is a non-profit organization working with the State of Ohio and other sectors of the state economy to accelerate the availability and use of broadband in the state in order to create: affordable availability of broadband for all of Ohio, better business environment, more effective community and economic development, improved healthcare, enhanced education, and more efficient government.

<sup>8</sup> Connect Ohio, *Planning: Broadband Availability in Ohio*. Retrieved February 20, 2013 from Connect Ohio website <http://connectohio.org/planning>.

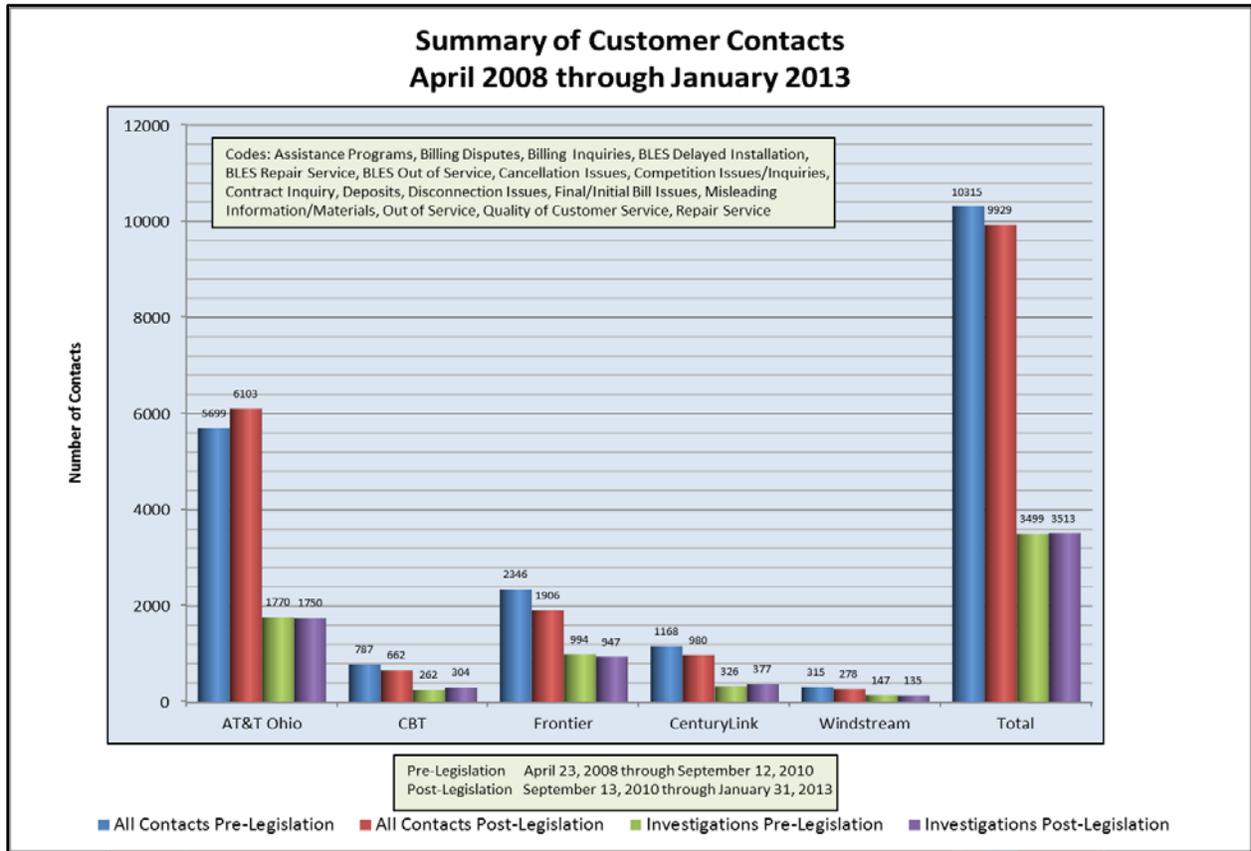
<sup>9</sup> Connect Ohio, *Connected: Connect Ohio Quarterly* (Summer 2012). Retrieved February 20, 2013 from Connect Ohio website [http://connectohio.org/sites/default/files/publication-newsletters/connected\\_summer\\_2012.pdf](http://connectohio.org/sites/default/files/publication-newsletters/connected_summer_2012.pdf).

<sup>10</sup> Analysis courtesy of Connect Ohio.

<sup>11</sup> See Ohio Revised Code 4927.02 (A)(4).

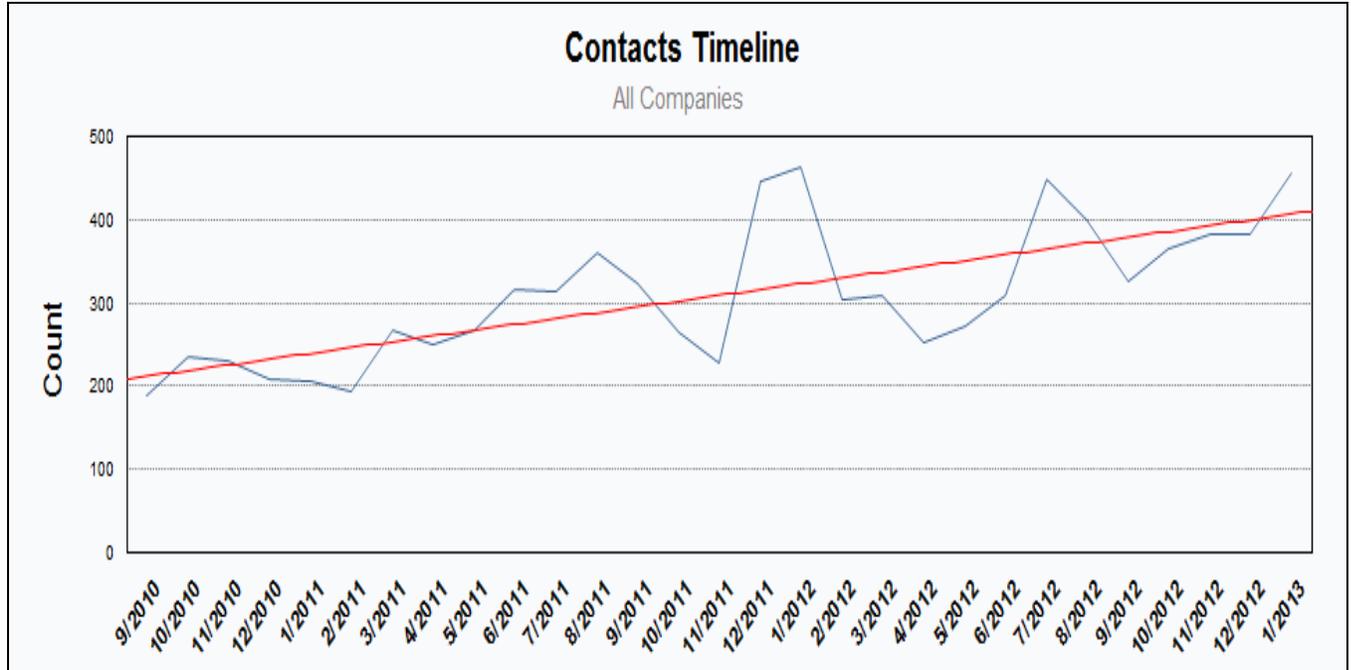
**APPENDIX A**

**SMED CONTACT AND INVESTIGATION DATA**

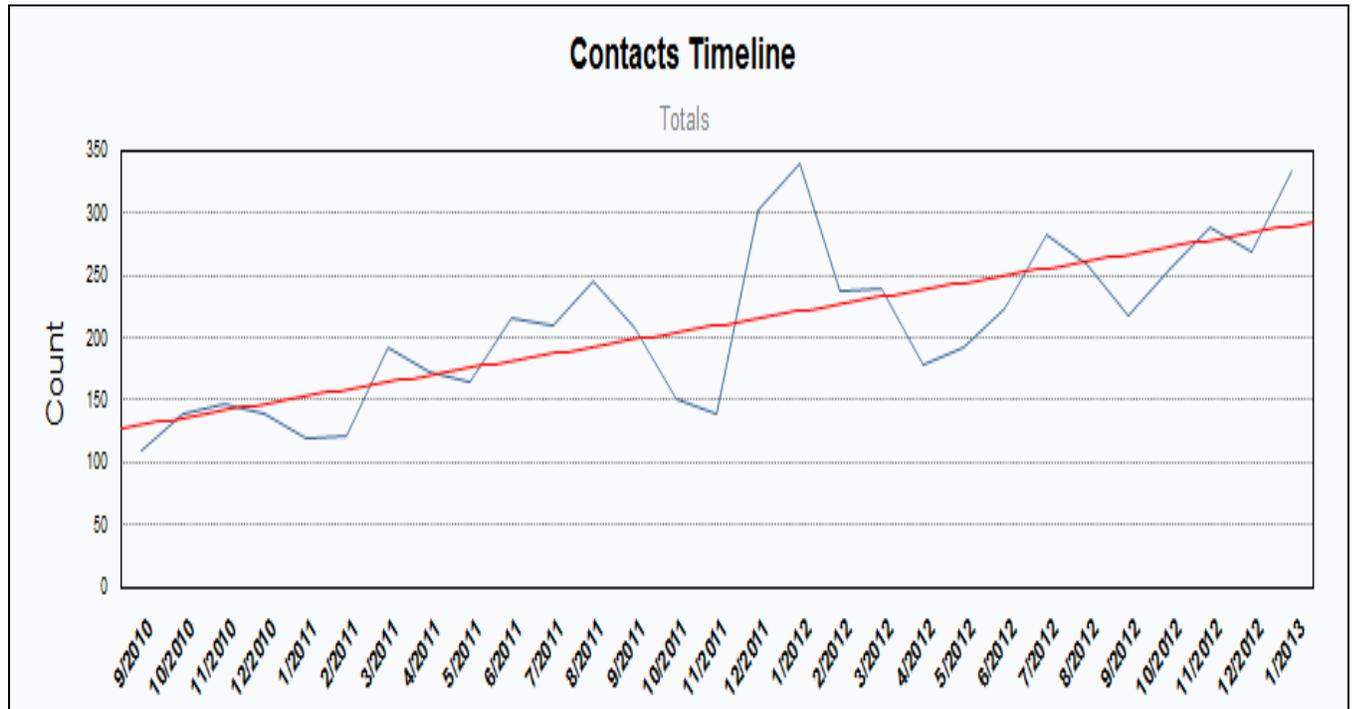


## COMPANY SPECIFIC CONTACTS

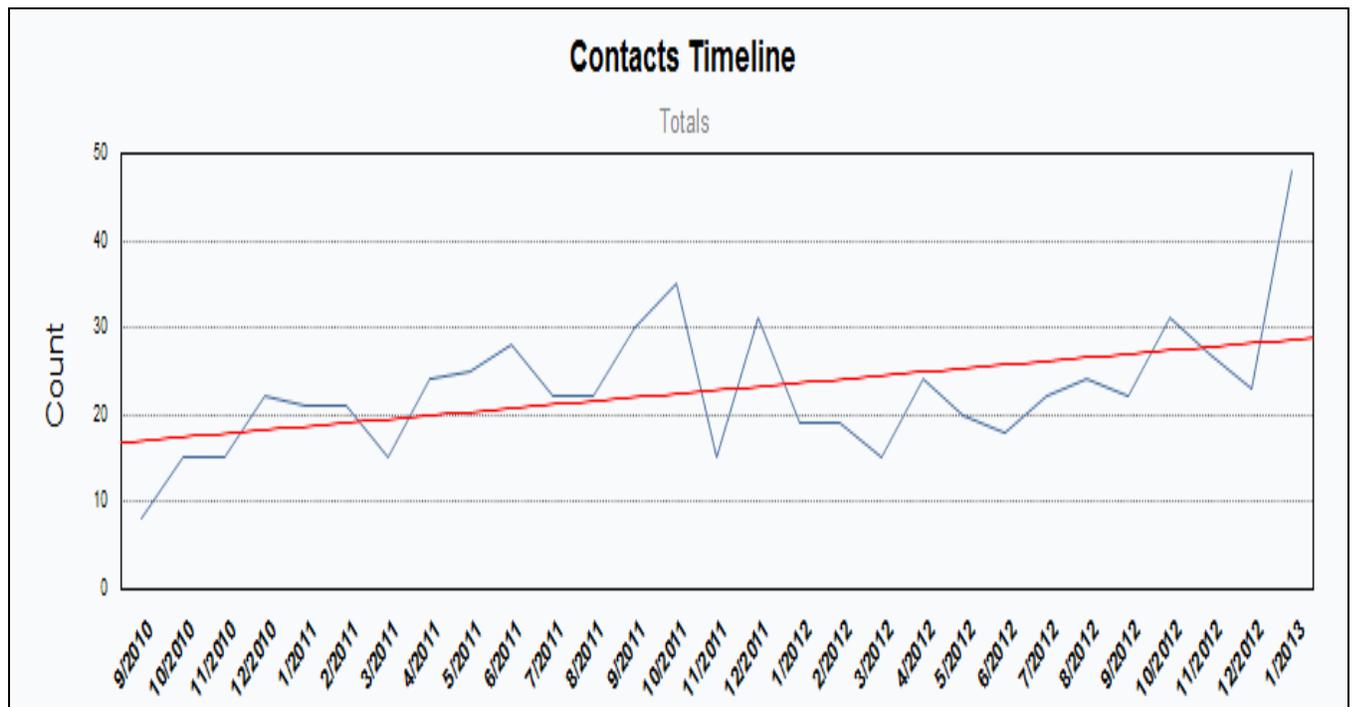
### All Companies



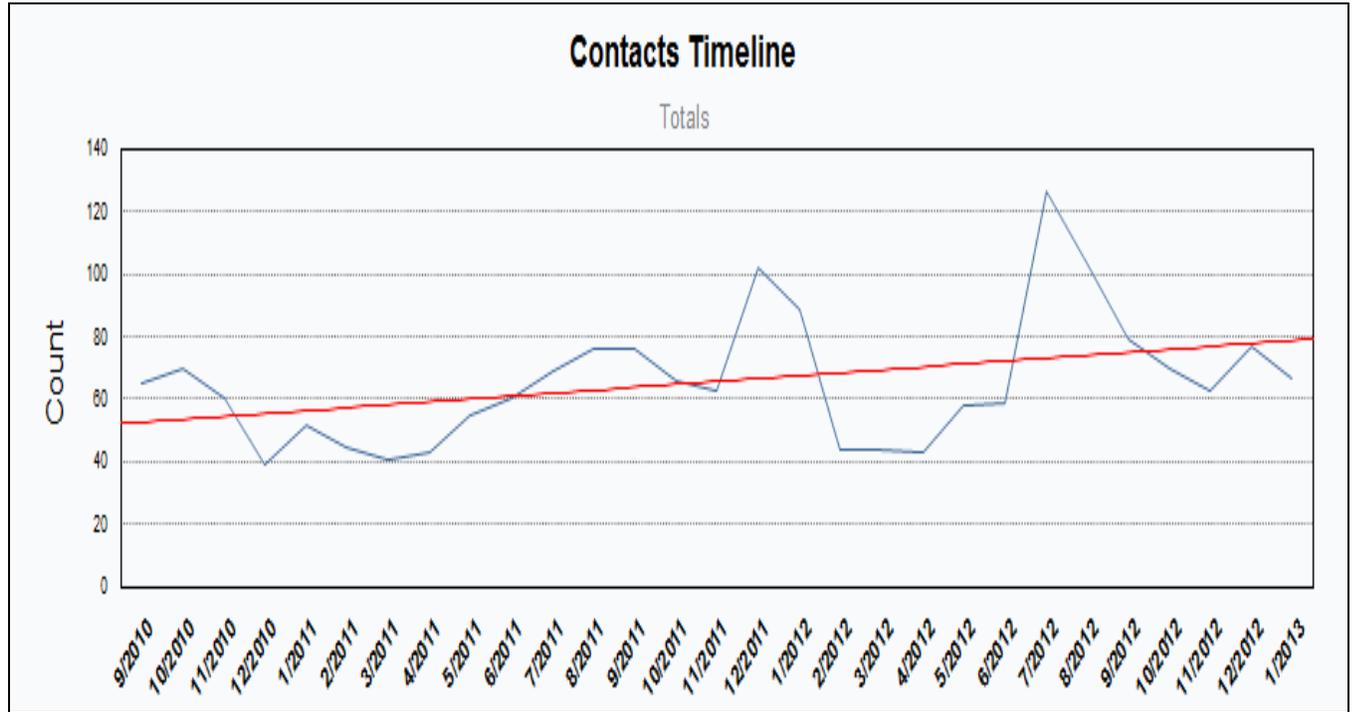
**AT&T**



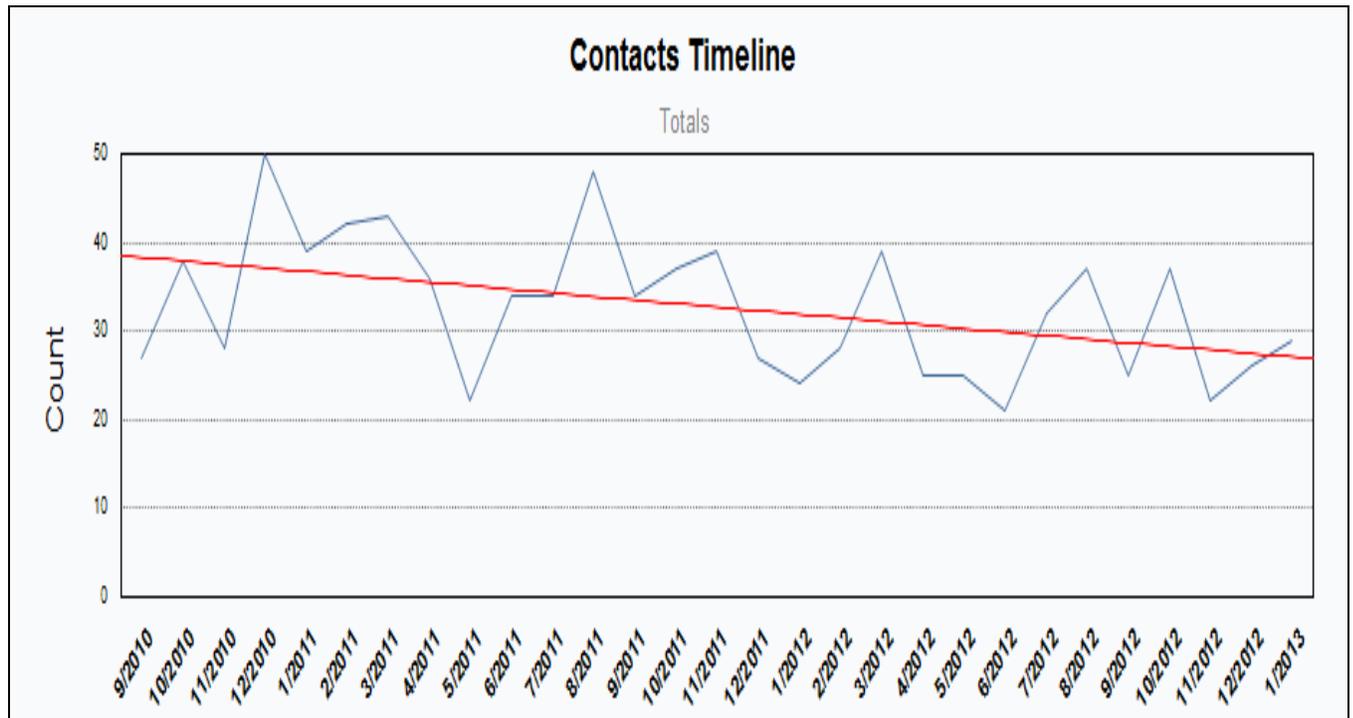
**Cincinnati Bell**



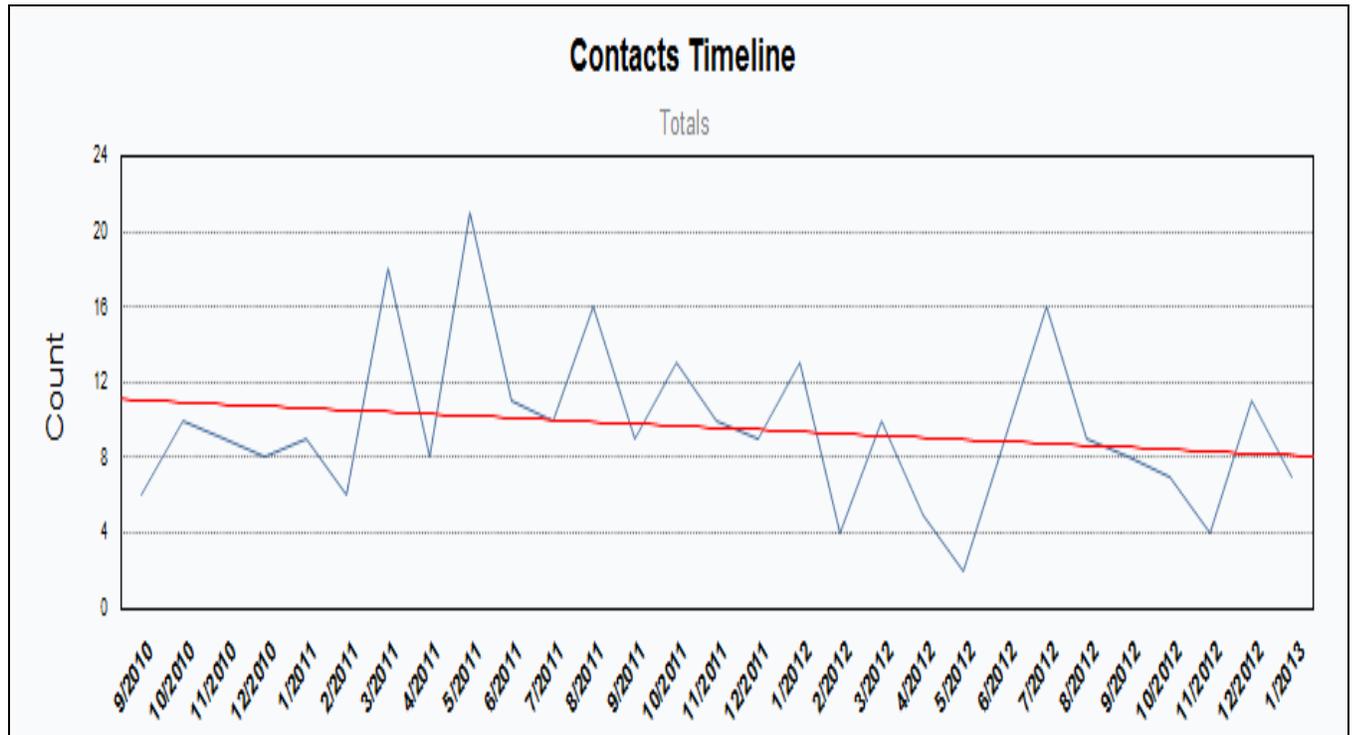
**Frontier Communications**



**CenturyLink**

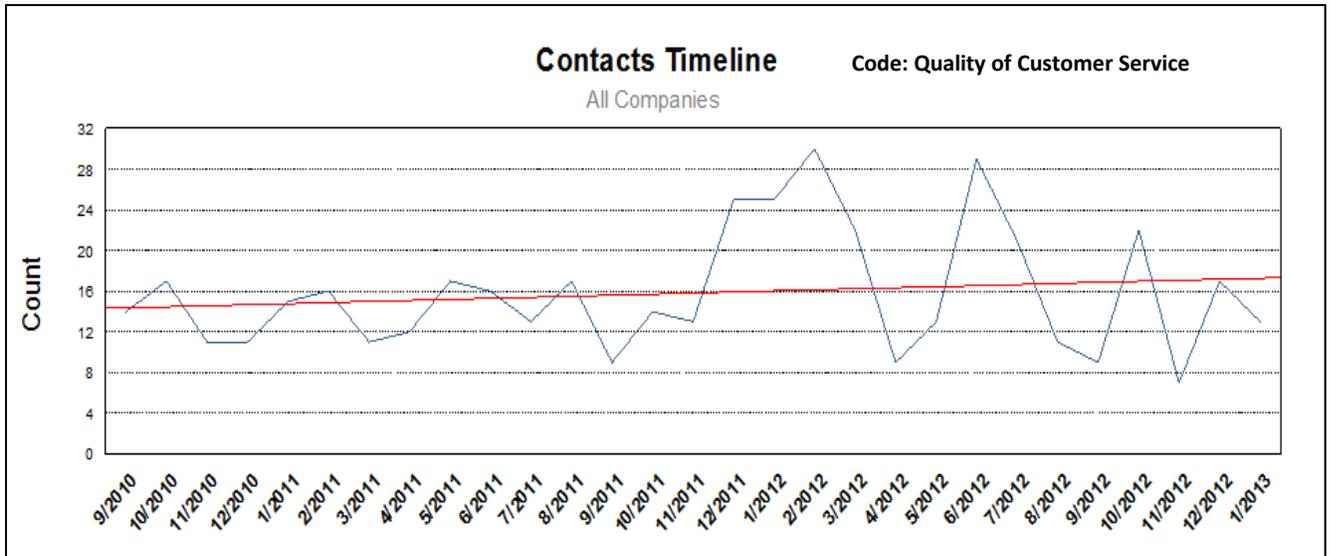


### Windstream

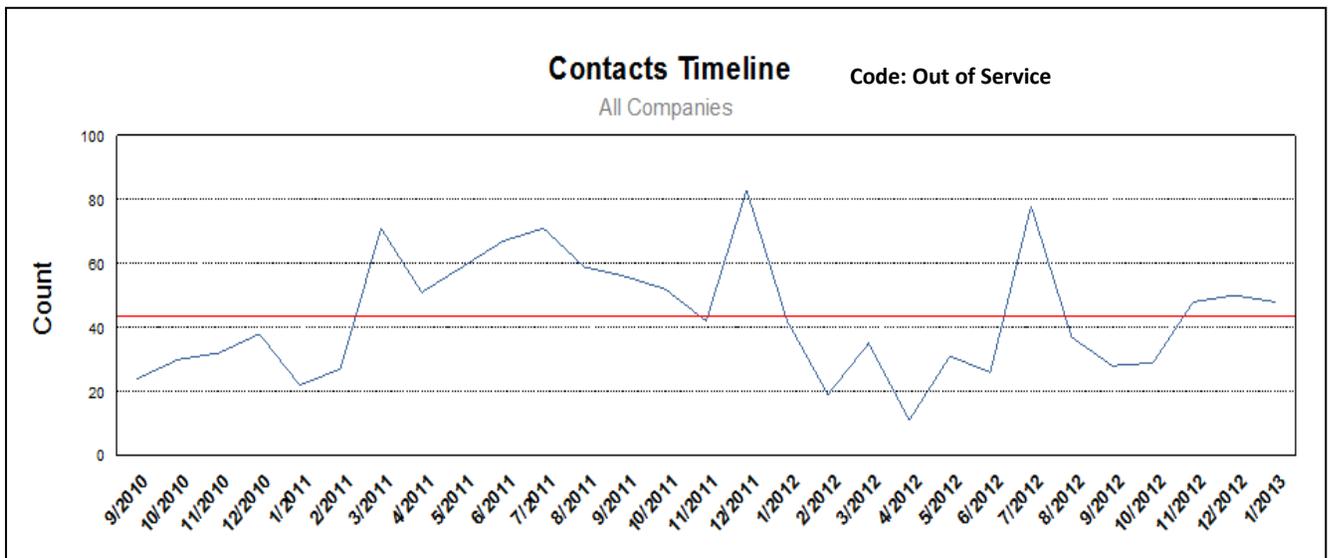


## CONTACT CODES

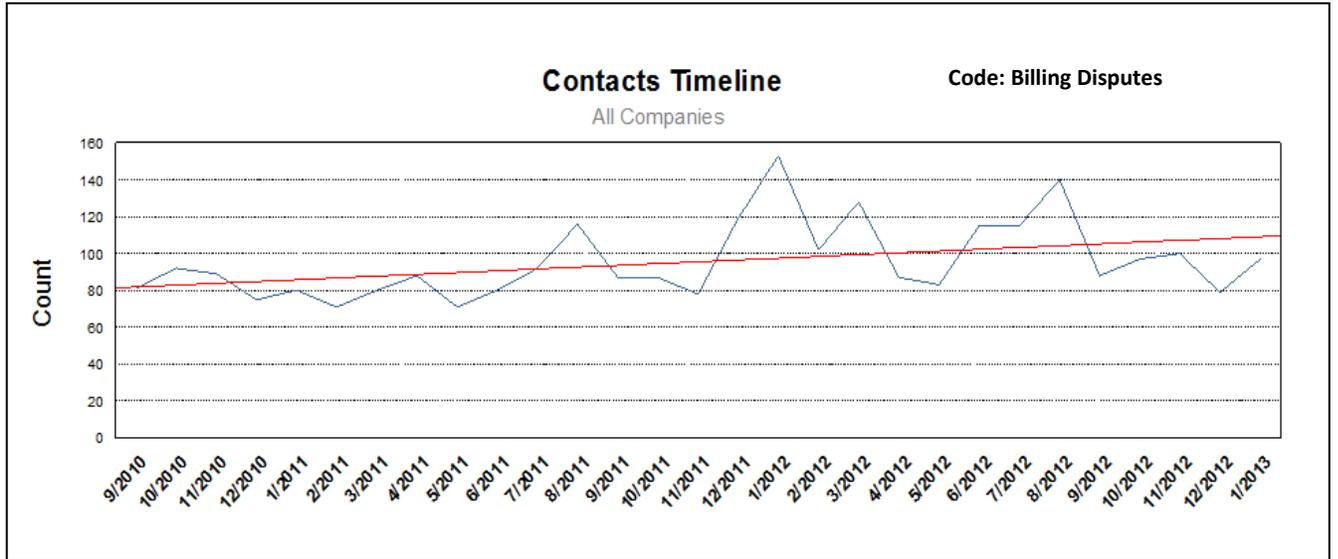
### Quality of Customer Service



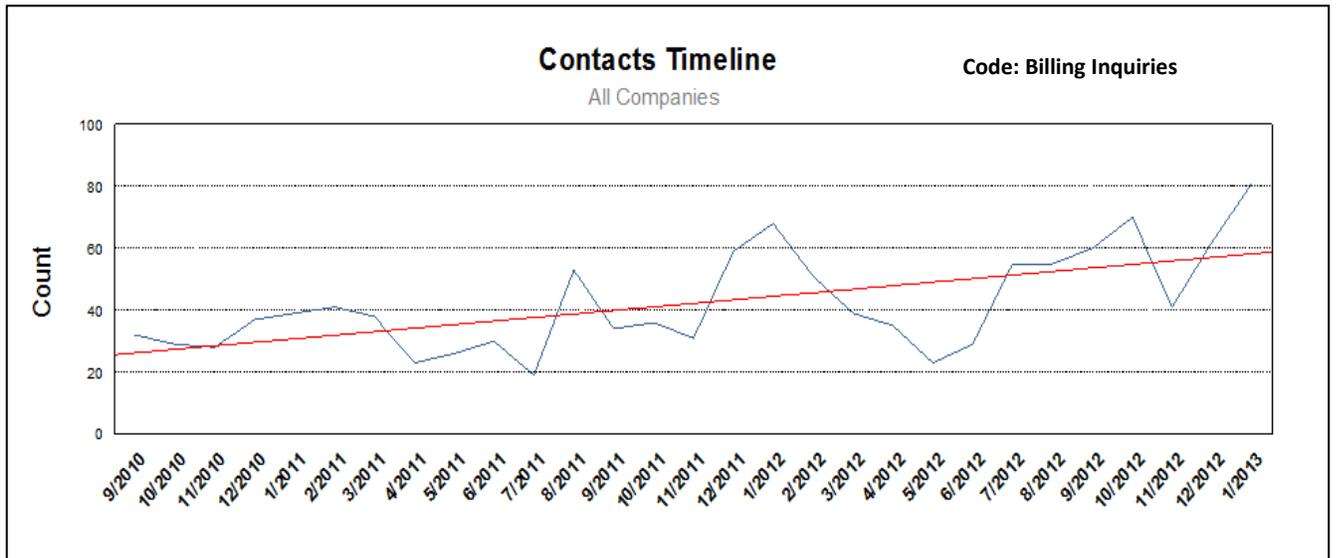
### Out of Service



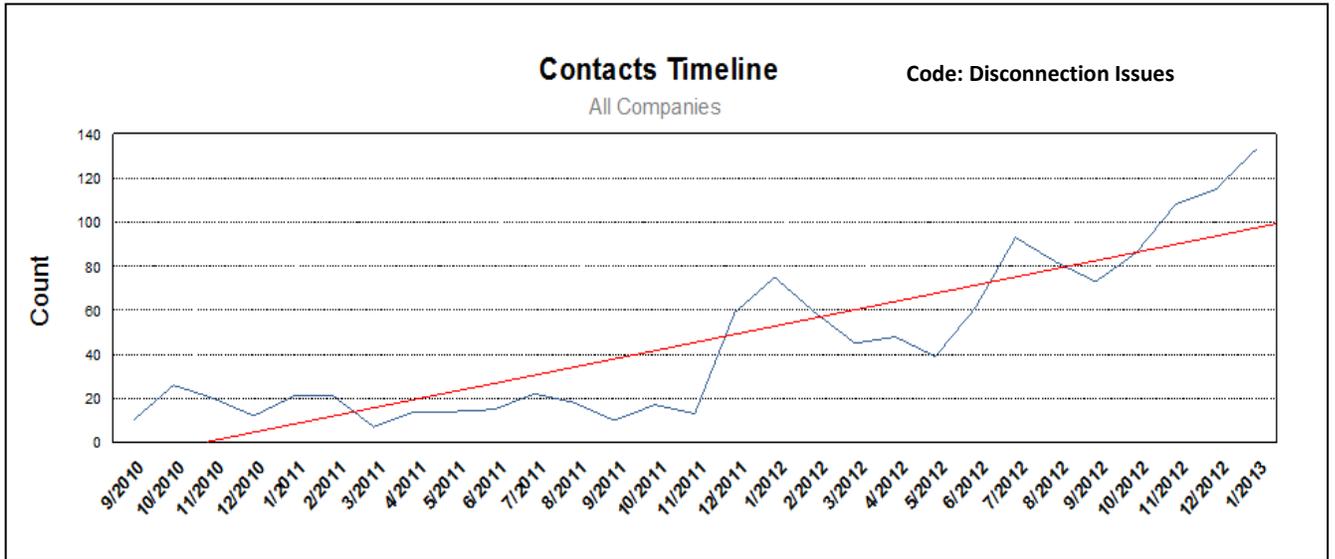
### Billing Disputes



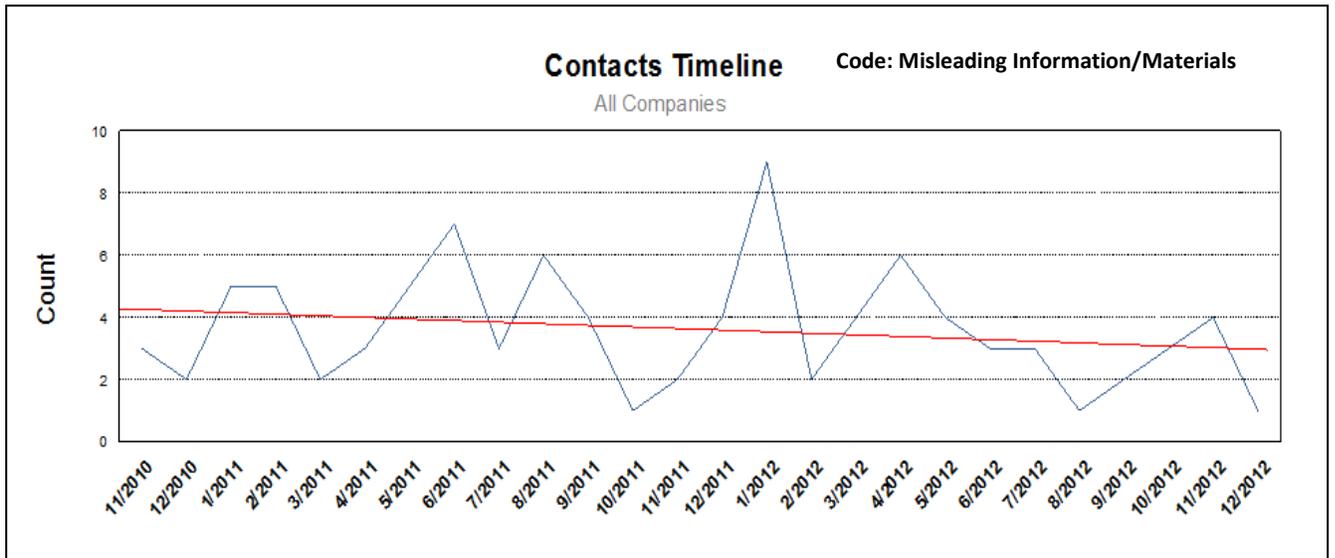
### Billing Inquiries



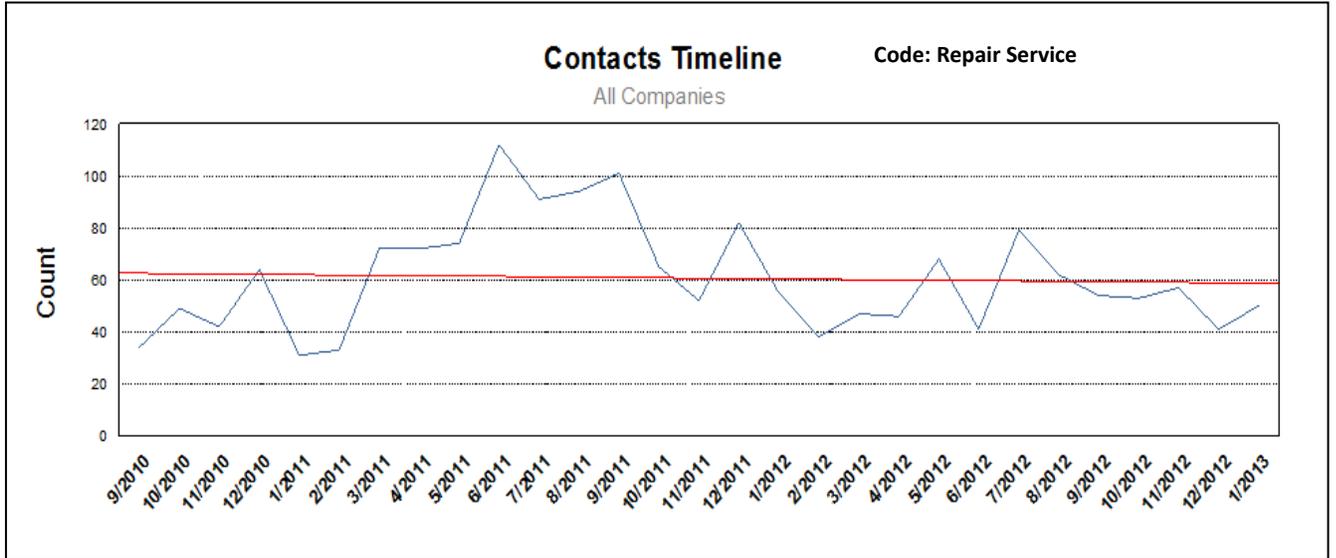
### Disconnection Issues



### Misleading Information/Materials



### Repair Service

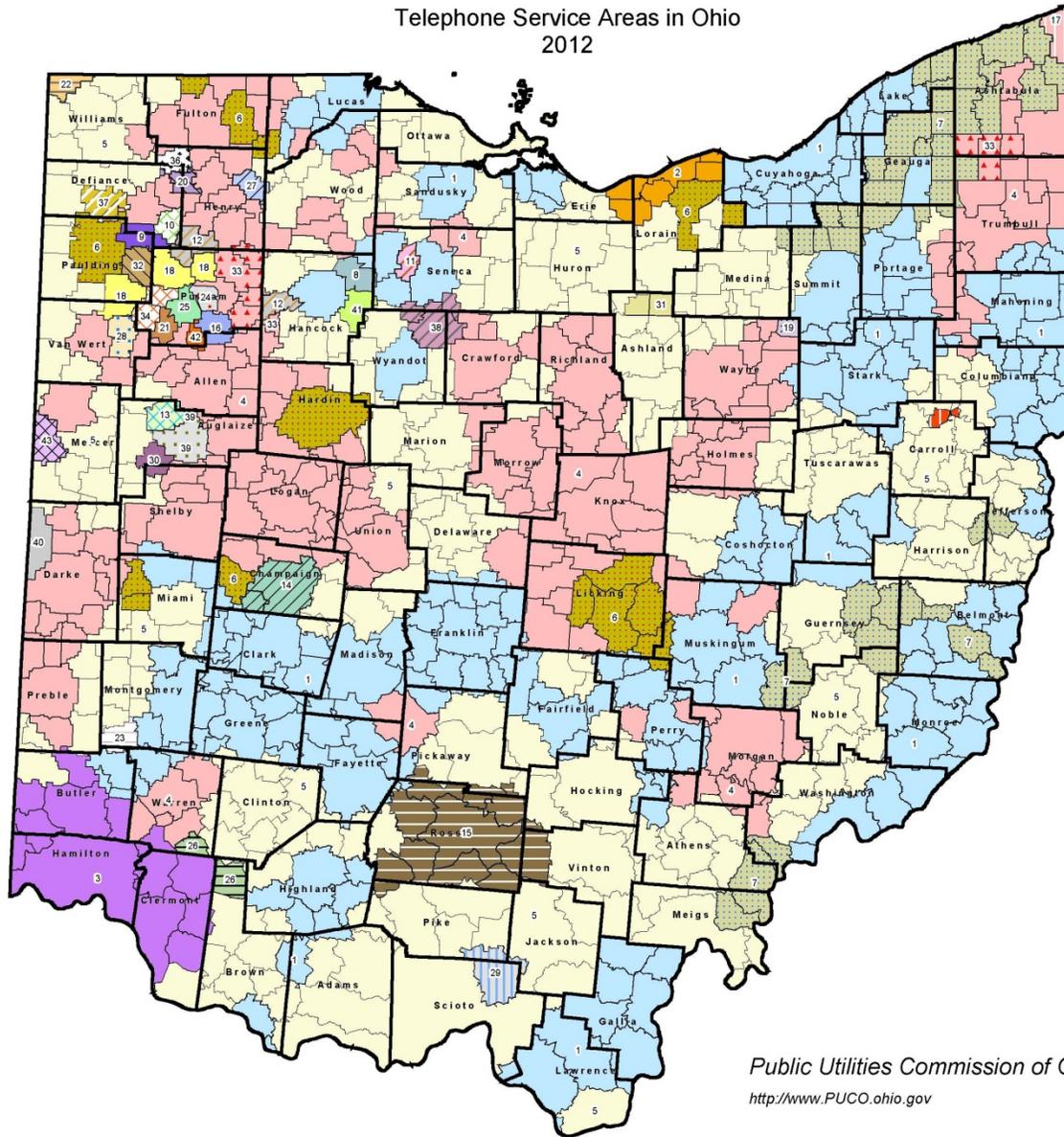


**APPENDIX B**  
**COMPETITIVE BLES AREAS**



**APPENDIX C**  
**TELEPHONE EXCHANGE MAP**

Telephone Service Areas in Ohio  
2012



Public Utilities Commission of Ohio  
<http://www.PUCO.ohio.gov>

Large Incumbent LECs

Small Incumbent LECs

(1) AT&T Ohio	(8) Arcadia (TDS)	(17) Conneaut	(26) Little Miami (TDS)	(35) Pattersonville
(2) CenturyTel (db/a CenturyLink)	(9) Arthur Mutual	(18) Continental (TDS)	(27) McClure	(36) Ridgeville
(3) Cincinnati Bell	(10) Ayersville	(19) Doylestown	(28) Middle Point Home	(37) Sherwood Mutual
(4) UTO (db/a CenturyLink)	(11) Bascom Mutual	(20) Farmers Mutual	(29) Minford	(38) Sycamore
(5) Frontier North	(12) Benton Ridge	(21) Fort Jennings	(30) New Knoxville	(39) Telephone Service
(6) Windstream Ohio	(13) Buckland	(22) Frontier	(31) Nova	(40) United of Indiana
(7) Windstream Western Reserve	(14) Champaign	(23) Germantown	(32) Oakwood (TDS)	(41) Vanlue (TDS)
	(15) Chillicothe	(24) Glandorf	(33) Orwell	(42) Vaughnsville
	(16) Columbus Grove	(25) Kalida	(34) Ottoville Mutual	(43) Wabash Mutual