State of Connecticut

Office Of Consumer Counsel

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OCC Testimony

RB 6402 "AAC Modernizing The State's Telecommunications Law"

Connecticut General Assembly

Energy & Technology Committee, February 21, 2013

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Summary of OCC Testimony

RB 6402 "AAC Modernizing The State's Telecommunications Law"

Energy & Technology Committee, February 21, 2013

This is not a "modernization" bill, but simply a "deregulation" bill for the two telephone companies operating in Connecticut, AT&T and Verizon.

The bill basically seeks to allow the state's two "telephone companies" to stop providing landline basic telephone service, although there are over 1 million landlines in Connecticut, including residential and small business lines. (Section 5)

@ The General Assembly should not pass this bill because AT&T filed a Petition with the FCC just last November, detailing their plans to "clear away the regulatory underbrush" governing the company's older landline and DSL networks. The FCC accepted AT&T's proposal and the General Assembly should let the FCC take charge of this issue on a national basis, as AT&T has argued it should.

AT&T asked the FCC for a "testing process" to develop procedures for the inevitable transition to a broadband telephony network in this country. The OCC supports AT&T's concept of creating actual test markets for the transition process.

Only through the FCC can procedures be implemented to safely transition the nation's telephone system from its legacy systems to one based on Internet-protocol, as requested by AT&T last November. Proper procedures and processes must be created to provide for a timely and smooth transition for existing customers, not merely a month's notice as this bill provides. This is an extremely serious issue that demands a national solution, not a piecemeal approach by 50 states.

@ The telephone companies also want to get out of service quality standards and penalties, but their dismal performance demands regulation. (Section 6) The various storms over the last two years demonstrated poor restoration performance to all 169 towns across the state. Strong service quality standards are essential to assure residents and businesses, and

communities, that the telephone companies are keeping their equipment up to the highest marks at all times.

@ Finally, the telephone companies claim that there is sufficient "competition" for basic telephone service to allow customers to find alternative sources for "plain old telephone service," POTS.

There does not exist evidence of competition for basic phone service: cable companies only sell bundles with television, wireless is far more expensive and can be difficult for elderly consumers. Simple and inexpensive may be less profitable to telephone companies, but it is an essential public utility for 1 million landline customers in this state.

In the absence of true competition for basic telephone service, this bill will result in higher prices for most residential telephone customers across the state at a time when electric, natural gas, and cable rates have already skyrocketed.

@ Thus, continued regulation is required in order for Connecticut's 1 million landline customers to continue to have service from a telephone company. These companies are very profitable, they just want to concentrate their efforts on more profitable wireless and broadband services. That makes fine business sense, but to allow these massive companies to simply provide the state and customers with only 30 days' notice before abandoning these customers will be disastrous for the state, especially the thousands of disadvantaged and small business customers.

TABLE OF CONTENTS

CONTENTS **PAGE**

State of Connecticut

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RB 6402

"AAC Modernizing The State's Telecommunications Law"

Testimony Presented to the Energy & Technology Committee

by Bill Vallée

Principal Attorney for Telecommunications, OCC

State Broadband Policy Coordinator

February 21, 2013

The Office of Consumer Counsel (**OCC**) **strongly opposes the passage of Raised Bill No. 6402**: AAC *Modernizing The State's Telecommunications Law* that basically seeks to allow the state's two "telephone companies" to 1) withdraw from local wireline basic telephone service, and 2) operate without quality of service standards or penalties.

The OCC notes that AT&T filed a Petition with the FCC on November 7, 2012, outlining their plans to "clear away the regulatory underbrush" governing the company's older landline and DSL networks. [1] AT&T asked the FCC to oversee tests of how traditional landline infrastructure can be replaced with newer technologies, such as Internet-based landline service and high-speed wireless networks, letting customers leave for other providers such as cable companies, so that the incumbents can focus their

[1] AT&T *Petition to Launch a Proceeding Concerning the TDM-to-IP Transition* (filed Nov. 7, 2012) (AT&T Petition) http://www.att.com/Common/about_us/files/pdf/fcc_filing.pdf

resources on wireless and broadband services. The FCC has accepted AT&T's petition and that docket is proceeding apace in Washington, D.C.

The state's General Assembly would best serve the state's consumers by allowing that FCC proceeding to thoroughly examine the issues presented by this bill, authored by the state's two telephone companies, and implement procedures to deliberately transition the nation's telephone system from its legacy systems to one Internet-protocol based, as requested by AT&T. Clearly, a national solution, requested by the proponent of this proposed state legislation, will be preferable to 50 states each enacting their own piecemeal versions of a transition plan.

Alternatively, since the bill presumes the existence of competition for plain old telephone service (POTS) in this market, which has no evidentiary foundation, the General Assembly would again act in the best interests of the state's telephone consumers by referring the issues in this bill to the Public Utilities Regulatory Authority for a contested-case investigative docket. By utilizing the experts and procedures of the state's utility regulatory agency, the General Assembly will provide all interested stakeholders to participate in developing an evidentiary record that will substantiate future decisions based on presumptions of competition and how best to address the inevitable change of technology presently occurring for telephone service in the industry.

This bill is a proposal by the telephone companies to deregulate their services in this state based on a claim that there exists sufficient competitive pressures in the telephone market to control market power abuses. In fact, there does not exist evidence sufficient to demonstrate that the massive market power currently possessed by the telephone companies will be adequately checked by competitive pressures in this state to prevent injury to consumers or the wholesale market.

The telephone companies will have an unfettered right, if this bill passes into law, granted solely by legislative fiat without a regulatory investigation engaging all stakeholders, to 1) withdraw from local wireline basic telephone service, and 2) operate without quality of service standards or penalties. In the absence of true competition for basic telephone service, this bill will result in higher prices for most residential telephone customers across the state at a time when electric, natural gas, and cable rates have already skyrocketed.

Introduction

While it may seem hard to find anyone who doesn't have a mobile device, there are actually still thousands of people in Connecticut, many of them disadvantaged residents such as seniors, disabled, and low income residents, who rely on an old-fashioned, low-tech landline for their inexpensive dial-tone connection to the world. And, if this bill passes, many of the state's residents, businesses, and potential telecommunications competitors (wholesale customers of the telephone companies) will become disconnected from the telecommunications system by the withdrawal of landlines and state quality of service regulations proposed in this bill.

These customers, all users of the state's 1.34 million traditional wireline or switched access lines, would be greatly impacted by a pullout of service by AT&T. Despite attempts to portray traditional wireline as an inconsequential service, it is anything but for Connecticut, which has about 1 1,063,000 switched access lines (landlines) (1,165,000 adding in VoIP lines offered in bundled packages).[2] AT&T probably has about 1.1 million or 82% of those lines. Plainly, these companies are obviously "Too Big To Bolt."

Business customers probably make up about 45% of the AT&T lines and residential customers number about 55% of the total landlines as of a year ago. Thus, the pullout would not just affect switched access consumers. Virtually every telecommunications company operating in the state is a wholesale customer of AT&T and, thus, every residence, business and communications company in the state, would be impacted.

In short, this bill will gut the state government's ability to ensure safe and reliable service for landline phones used by thousands of its citizens. At the least, provisions would be required to be part of the legislation providing for adequate lead time for careful planning and approval by a knowledgeable and strong regulatory authority, not merely 30 days' notice, in addition to the availability of competent companies ready to take over the infrastructure and customer base.

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[2] FCC's Local Telephone Competition Report, Table 9, Total End-User Switched Access Lines and VoIP Subscriptions by State as of December 31, 2011 http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0114/DOC-318397A1.pdf

This bill asks the General Assembly to grant the two telephone companies operating in Connecticut the authority to withdraw from providing the bulk of their landline service in this state with merely 30 days' notice to the regulator, entirely based on their illusory claims of "competition" for basic services. Industry claims that the Connecticut market has "robust competition" and thus plenty of alternatives for such customers for basic telephone service are completely disingenuous: they know perfectly well that there are no options for plain old telephone service (POTS) among the few providers offering telephone service of any kind to the residential market.

A vote for this bill is also a vote that competitive pressure will successfully substitute for the quality of service standards imposed by PURA on the telephone companies in section 6. Indeed, service quality demonstrates how these companies view their investing strategies in this state: AT&T was fined over $1 million by PURA for its dismal failure over at least a period of 9 years to meet service quality standards. Incredibly, the company has not met those standards even after paying the penalty to the state treasury. If the company is willing to suffer sizable penalties for failing to meet quality of service penalties . . . how willing will the company be to invest in service quality in the absence of penalties?

The truth is that these customers will be forced to contract for a confusing wireless plan, a bundled cable service plan, or no plan at all. The bundles of services can easily run into the hundreds of dollars per month for services that many of the state's residents cannot afford and do not need. Landlines are subsidized for low-income people, including seniors, and while so-called Lifeline rates for cell phones are potentially coming, they aren't available yet. In short, there are no options available in this state for basic telephone service at low rates.

The Goal Of The Telephone Companies Providers Is Complete Deregulation Of Landline Service

The telephone business has always been characterized by rapid evolution of technology and services, but the rapid demise of street-corner phone booths and home delivery of telephone books are only the most recent examples of how what was once considered essential is now extinct. Passage of this bill will guarantee the premature end of landlines as they become merely yet another chapter in American telecommunications history.

The Legislature must not take the bait of providing the telephone companies with a legislative fiat by accepting the industry claims of "robust competition" in this state for basic telephone services. What is needed is a thorough a contested-case investigation by PURA of the truth of that claim, with input from all affected parties. Such a deregulatory mandate by the Legislature will allow the telephone companies to force consumers away from inexpensive and basic landline services into costlier – and far more profitable to the providers - bundles that include VoIP telephone, wireless telephone Internet access, and even television programming as a prerequisite to purchasing basic telephone services.

Passage of the bill will preclude the state from enforcing long-established strong customer protections that maintain high quality and reliable services, preventing cramming (unauthorized, misleading or deceptive charges) and slamming (switching a phone service to a different provider without notice), while protecting the rights of the state's most vulnerable customers such as the poor, limited-English speakers, and the elderly. Alarm systems and many of the new healthcare systems such as defibrillator/pacemakers monitored by physicians do not function without the reliability of landlines, reliability standards that are not present in wireless networks, which also suffer from chronic problems with clarity, coverage, and battery life.

The goal of the telephone companies providers in this bill, versions of which have already succeeded or failed to pass in other states, and also filed at the FCC,[3] is complete deregulation of landline service. Their ambition is to extract themselves from servicing areas they don't find as profitable as other segments of their business, at their own discretion.[4] They simply want the ability to offer telephone services at as high a price as possible, by using their immense market power as the two statutory "telephone companies" in this state. It is frankly irresponsible public policy for the state to favor the business plans of the telephone companies over requiring that reasonably-

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[3] AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, at 1 (filed Nov. 7, 2012) (AT&T Petition) http://www.att.com/Common/about_us/files/pdf/fcc_filing.pdf

[4] AT&T, Inc. (2013, January 24). Form 8-K. Retrieved from http://www.sec.gov/. "Revenues from our **wireline consumer customers** were $5.5 billion, an increase of 3.0 percent compared to the fourth-quarter 2011, **driven by a continued increase in broadband and video revenues partially offset by the decline in voice revenues**."

priced access to basic phone services, with quality service standards, continues to be provided to all Connecticut residents.

Companies like AT&T and Verizon have spent years lobbying to retire those "legacy" lines and services by arguing that they're expensive to maintain. It makes better business sense for these companies to rid themselves of their copper networks and replacing them with newer technology since it's far more lucrative to operate VoIP and wireless networks. Their financial reports to the state and federal regulators expressly state their business plan intentions to stop providing landline services and to promptly move customers into the far more profitable, less regulated, and non-unionized operations of wireless and broadband services.

AT&T filed a Petition with the FCC on November 7, 2012, outlining their plans to "clear away the regulatory underbrush" governing the company's older landline and DSL networks. [5] AT&T asked the FCC to oversee tests of how traditional landline infrastructure can be replaced with newer technologies, such as Internet-based landline service and high-speed wireless networks, letting customers leave for cable so that the incumbents can focus their resources on wireless services.

The architect of the National Broadband Plan, Blair Levin, former chief of staff of the FCC, has stated that he believes that "the requested trials are unlikely to cause any harm," adding, "the sooner they start that experimentation, the sooner the FCC will have real data" so that the telephone companies will no longer be required to invest "in an infrastructure we know will be stranded." The OCC concurs with Mr. Levin's statement and urges this General Assembly to not interfere with the FCC's prerogative to move forward promptly with developing a process for the inevitable transition to a broadband-based telephony network in this country.

At a conference with investors that day, AT&T's CEO said the company will invest $14 billion in its networks over the next three years in an investment plan, Project Velocity IP (VIP), with those dollars going into wireless, business services and the fiber-to-the-node U-verse product. Those

[5] AT&T *Petition to Launch a Proceeding Concerning the TDM-to-IP Transition* (filed Nov. 7, 2012) (AT&T Petition) http://www.att.com/Common/about_us/files/pdf/fcc_filing.pdf

three product lines make up 81 percent of AT&T's revenue and collectively are growing at 6 percent a year. [6]

AT&T's CEO said the company would try to repeal landline regulations on the state level, though the carrier said its plan isn't contingent on any regulatory changes. The telecom company said it wants to eventually decommission the technology behind its decades-old, copper-line phone network that currently covers 76 million homes and businesses in 22 states.

AT&T's CEO said the states that are more flexible on changing regulations could end up first in line for additional investment from AT&T. "We are going to have to see 21st-century regulation for 21st-century investments like this," Mr. Stephenson said. "I think what you're going to see is that these investments will go first to those states where you have good line of sight to good regulatory authority to do some of the things we're talking about here."

The company stated that it had determined that investing in the operations instead was a better option than selling all or part of the company's 22-state wireline business for several reasons, including the regulatory hurdles that would be involved in a sale. The three-year plan will extend high-speed Internet to 8.5 million more homes and businesses but could eventually leave a quarter of the customers in AT&T's landline footprint, or 19 million homes and businesses, without any landline service from AT&T. The company stated that withdrawing from those services will eliminate a high-cost product that delivers low revenues, while also allowing it to streamline its network and reduce the complexity of both the applications and networks it operates.

The deregulation of phone service is reaching the point where there's little oversight at all. Basic utilities like phone service have long been considered necessities and state and federal legislators have ensured that every household has access to them. Despite industry claims of

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[6] AT&T to Invest $14 Billion to Significantly Expand Wireless and Wireline Broadband Networks, Support Future IP Data Growth and New Services; Improved Capital Structure is Foundation for Investment and Accelerated Growth; New York, New York, November 07, 2012
http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661

"competition" and potential increases in their investment in the state, this bill will cause many thousands of existing residential customers to lose their inexpensive, reliable, and simple-to-use plain old telephone service (POTS). The impact of RB-6402 goes far beyond its stated goal of "leveling the playing field" for the telephone companies to claimed "competition", and in fact it targets the elimination of minimum standards for all telephone services by tying regulators' hands.

Both AT&T and Verizon claim to be disadvantaged in the "competitive" fight for customers in Connecticut, wishing to "level the playing field," they are indeed regulated by CT in a unique way, subject to C.G.S. § 16-1(23) "Telephone companies." Perhaps these companies should be proposing a bill to change that status, or asking PURA to help them change it. But, this unique status continues to be necessary to protect all consumers, residential and business, as well as the telecommunications market in this state. As the market is currently structured, there cannot be a level playing field because AT&T and Verizon are in a uniquely superior infrastructure and marketing position relative to all other providers.

Simply put, in many cases other providers need AT&T/Verizon infrastructure & services to compete in the first place, and many of the wholesale services provided to the market by the telephone companies are not subject to any competition at all. The telephone company obligations as a public service telephone company in CT are not, contrary to their protests, a disadvantage. The bottom line is: What the telephone companies enjoy in their Connecticut operations more than outweighs any "disadvantage."

For example, in Connecticut, unlike other jurisdictions, the telephone companies have:

- No charges by individual municipalities for use of the public rights of way;
- The telephone companies have "joint ownership" and management duties on all the 800,000 utility poles across the state: as such, they enjoy unfettered access to the poles without reporting or approval requirements from PURA;
- No carrier of last resort obligation in this state;

- Very slight rate regulation except for the few remaining noncompetitive POTS lines.
- No wholesale service quality regulations although such regulations are required by P.A. 99-222, none were instituted by PURA.

The retail service quality regulations apply to all telecommunications companies. So, whether or not the telephone companies is a public service telephone company, those would apply. Other jurisdictions have rules and regulations that Connecticut does not have, but which could be enacted and make AT&T's business much more difficult:

- Connecticut could allow individual municipalities to tax or levy fees on infrastructure in public rights of way.
- Connecticut could authorize the electric utilities to acquire the property rights of the telephone companies in the 800,000 utility poles across the state.
- Connecticut could require service quality standards for owners that have attachments to infrastructure in the PROW.
- Connecticut could impose standards, including visual pollution standards, on big box equipment attachments in residential neighborhoods.
- Connecticut could open an antitrust proceeding regarding a telecommunications company's level of market dominance.

This is an anti-consumer bill because it permits the telecom industry to dictate the terms of its own regulation, or more to the point, deregulation. Protections built over a century of landline service will evaporate as consumers are forced by this bill to migrate to technologies with fewer regulations, particularly for older Americans, and urban and rural low-income residents. Without regulation or true competition for basic telephone services, the telephone companies will be free to price out customers they don't find profitable enough, and run roughshod over consumer rights with no fear of fines or sanctions. Consumers with complaints about their phone

service or phone bill would literally have nowhere to turn, and long-standing universal service obligations will be quashed.

These companies are not "losing" money on this service: they're making higher profits on POTS than is earned by any other regulated utility in Connecticut, electric, water, or gas. They simply want even higher returns on their investments, and that includes ridding themselves of "legacy" customers and equipment, such as the existing copper network. They're able to charge more per month and the profits are greater – AT&T reported its rate-of-return on wireline service as a "mere" 12% . . ., but wireless returned a 25% profit to the company.[7] Clearly, phone industry growth and profits have not been hampered by regulations, and these companies do not require carte blanche against any future oversight.

It is not coincidental to this bill that in addition to the motive of increasing profits, obviously a commendable goal for any corporation, these companies have also filed petitions at the FCC advocating that by dumping the copper network and moving basic telephone services to VoIP (Internet) technology, their operations should immediately become completely deregulated by the state and federal governments.

And, equally advantageous to these companies, while most landline work is now done by union employees, generally broadband services are also not subject to union requirements so they are more profitable to the companies, while creating fewer and lower-paying jobs in Connecticut. It is no secret that both AT&T and Verizon have experienced very poor relations with their Connecticut-based craftspersons over the last few decades, so it would therefore be a financial and corporate benefit to eliminate their union employees.

This bill is in part proposed based on the claim of incenting AT&T (and the other carriers) to invest in broadband deployment in the state, bringing jobs and economic development. To the contrary, the OCC suggests that giving AT&T and Verizon this free rein will neither yield the results that the

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[7] **AT&T, Inc. (2013, January 24). Form 8-K. Retrieved from http://www.sec.gov/**. Review of AT&T's financials – Statements of Segment Income- reveals that it makes twice the profit on wireless (25%) that it does for wireline (12%) (reporting the company's "Segment Operating Income Margin" for wireless and wireline services).

telephone companies "promise" nor, in the end, benefit the consumers who are supposed to enjoy the benefits of a broadband network.

There Are Not Two Networks, One PSTN And One IP-Enabled: They Are One *Evolving* Network, Composing The *Single* Local And Transmission Network

Many of the provisions of this bill are simply "red herrings" to disguise the true intent of the deregulation goals of the telephone companies. Be clear that the OCC does not disagree with AT&T's assertion in a filing with the FCC that universal broadband access is a critical national priority- the OCC plays a central role in the expansion of broadband access and adoption in this state.[8] The OCC has consistently endorsed broad-based telecommunications competition in this state, financially-healthy public utilities, and universal access to telephone and broadband services for decades. Thus, OCC supports AT&T's assertion regarding broadband.

The OCC disagrees with AT&T's claims to the FCC, however, that achieving this priority must be done by phasing out Plain Old Telephone Service ("POTS") and the public switched telephone network (PSTN)[9], and can only be accomplished by abandoning the regulations that keep global carriers like AT&T in check.

AT&T has asserted to the FCC, regarding the public switched telephone network ("PSTN") that

> [f]oremost on the Commission's agenda for enabling private investment to facilitate widespread deployment of broadband

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[8] FCC, GN Docket No. 09-51, *A National Broadband Plan for Our Future*; GN Docket No. 09-137, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*.
AT&T Comments on NBP Public Notice #25, Transition from the Legacy Circuit-Switched Network to All-IP Network (December 21, 2009) ("AT&T 12/21/09 Comments"), at 8.

[9] A fixed line network where the telephones must be directly wired into a single telephone exchange. The PSTN is now almost entirely digital in its core and includes mobile as well as fixed telephones.

infrastructure should be the elimination of regulatory requirements that divert resources from broadband to the PSTN."[10]

Those regulations that AT&T insists should be eliminated by the FCC include carrier-of-last-resort ("COLR") regulations[11]; and all federal support for the PSTN.[12] Indeed, as is most relevant to this bill, AT&T has argued to the FCC that its goal is to convince state and federal legislators to do away with all state regulation of telephone service.[13]

For about a decade, the telephone and cable carriers have been using the Internet within their networks to complete plain old telephone service calls that use conventional copper-wire handsets, as well as fiber-optic service, long-distance calls, and wireless calls. Broadband network facilities are jointly used for the provision of telecommunications and information services. For example, fiber optic broadband facilities are jointly used for the transmission of legacy PSTN voice traffic, the transmission of IP-based [voice over IP] VoIP calls, the interconnection function between telecommunications common carriers and information service providers, etc.

The PSTN that AT&T claims is obsolete, is not disappearing. The key point that AT&T willfully ignores is that there are not two networks, one PSTN and one IP-enabled. They are both the same network, including both the local and the transmission network. AT&T and Verizon are not maintaining two networks in any real sense: the same wires and wireless facilities, most of them built with ratepayer money in public streets and right-of-ways, are used in the provision of both POTS and "advanced broadband" services.

There is only one network; parts of that network are new, and use different technology from the PSTN. It could not be clearer that AT&T's attempt to divide the unitary network into two separate networks (one

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[10] FCC, GN Docket No. 09-51, *A National Broadband Plan for Our Future*; GN Docket No. 09-137, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*.

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[11] *Id*. at 24.

[12] *Id*. at 21-22.

[13] *Id.* at 17-19.

broadband/IP, and one PSTN) is just part and parcel of its overall strategy to eliminate as much regulation as possible (and where elimination is not possible, federalize it). It should also be clear that this attempt is not part of a grand plan to serve the public interest, but rather a scheme to maximize AT&T's profits and control over its network.

Conclusion

The FCC's 2010 National Broadband Plan assumes the country will inevitably move away from traditional landline services and use VoIP, wireless, or other technology. The OCC agrees with that prediction. That said, this bill is quite premature since it makes no provision for maintaining a safety net for those customers who are unable to rapidly move away from traditional landlines in the event of the abrupt demise of landline service, cutting off disadvantaged residents, especially those on fixed or low incomes.

Thus, what's really going in this bill is that the deregulation of the telecommunications industry has reached the point where the huge global phone companies are using their money and power to get laws passed in many states to allow them to pull out and disconnect the copper wires that support traditional landlines. Telephone technology is evolving, which is positive for both the providers and customers, but this bill will allow the telephone companies and other providers to simply inform the consumers of Connecticut that they will no longer provide basic dial-tone wireline services because they are going to move to VoIP services.

Since the telephone companies have expressed the goal of dismantling the copper networks, they have no incentive to maintain or repair the old copper networks and utility poles, as evidenced in Connecticut during the storms of the last two years. Service quality for all Connecticut telephone customers will deteriorate as the two traditional telephone companies use this bill to escape state regulations standards for line maintenance, service restoration and reliability. No agency would be able to prevent the telephone companies from favoring customers in high–income areas and redlining customers in rural or low–income communities.

Consumers, including seniors, still require state regulation to provide them with the historic protections to regulate quality of service, and if this

bill passes, such protection will be needed to preserve the very existence of telephone service itself for many of these customers. Connecticut customers will lose fair billing and collection rights, protections against unauthorized charges, and the ability to file a complaint and have it resolved by the PURA. Experience on the federal level demonstrates that the FCC is incapable of providing residential customers with adequate consumer protections for routine problems.

Standards for service quality and line maintenance for clear, reliable calls would vanish under the bill as telephones networks continue to migrate to VOIP, and rural communities would lose guarantees of phone access altogether. Rules requiring fair billing and collection, protections against unauthorized charges, and in-language customer service would no longer apply to most customers.

This bill will remove basic protections and services such as low-income service, 911 access or decent call quality and to resolve consumer complaints. Protection for residents from price gouging and unfair business practices like cramming (or unauthorized third party charges found on a customer's bill) should apply regardless of the technology the telephone companies choose to use for providing service. Customers of the "future" technology, basically fixed interconnected VOIP services, will continue to need the basic consumer protections provided for over a century in this state because all phone service will eventually transition to VOIP. Customers do not care what technology is used to allow them access to telephone service: they want reasonable rates, reliability, and only state regulation can guarantee those goals.

The state's General Assembly would best serve the state's consumers by allowing that proceeding to thoroughly examine the issues presented by this bill authored by the state's two telephone companies and implement procedures to deliberately transition the nation's telephone system from its legacy systems to one Internet-protocol based, as requested by AT&T. Clearly, a national solution, requested by the proponent of this proposed state legislation, will be preferable to 50 states each enacting their own piecemeal versions of a transition plan.

Alternatively, since the bill presumes the existence of competition for plain old telephone service (POTS) in this market, which has no evidentiary foundation, the General Assembly would again act in the best interests of

the state's telephone consumers by referring the issues in this bill to the Public Utilities Regulatory Authority for a contested-case investigative docket. By utilizing the experts and procedures of the state's utility regulatory agency, the General Assembly will provide all interested stakeholders to participate in developing an evidentiary record that will substantiate future decisions based on presumptions of competition and how best to address the inevitable change of technology presently occurring for telephone service in the industry.

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The OCC's positions on each of the eleven specific sections of RB 6402 "AAC Modernizing The State's Telecommunications Law" are presented below:

Section 1. C.G.S. Section 16-32. Elimination of Connecticut's Requirement For A Local Audit To Be Conducted By The Telephone Companies

The last management audit of SNET showed that AT&T holding company charged the Connecticut company one billion dollars in one year for AT&T corporate pension funding and thus put SNET in the red. This "in-the-red" status was not due to Connecticut operations that year, but rather it was due to an AT&T corporate decision to charge that large amount off to SNET.

This is the huge "sucking sound" emanating from New Haven, being the sound of money shooting south to the parent company, based in Dallas, Texas, resulting in consistently reduced investment in Connecticut. The company has the right to shift and invest its earnings as it chooses, but the state of Connecticut also must retain the ability to monitor the financial and business dealings of this essential public utility, with huge market power in every residential and business service niche, while generating immense profits in this state.

The consolidated books of AT&T parent do not reveal any financial data specific to Connecticut and thus without PURA's regulatory authority to require an audited financial statement of the AT&T-Connecticut company, such information would remain secret. Without the audited financial statement, it would be impossible to gauge the true state of AT&T-Connecticut's business in our state as the company's financials are "rolled up into the holding company audit . . .". Connecticut has no authority to regulate the national holding company, AT&T, Inc. The subject of the national audit is the national holding company, not SNET. As such, the national audit has no audit information on SNET and is of no practical use to CT regulators.

In this period of repeated investigations of poor consumer quality of service at PURA and in the media, and when the economic condition of the

country and the state's corporations are on the front page every day, this is hardly the time to reduce audit reports to scrutiny by PURA and the OCC. PURA and the OCC are a part of an entire system of gatekeepers -- auditors, corporate boards, analysts, ratings agencies, investment bankers, lawyers and accounting standard-setters -- who operate and regulate the regulated markets, be they the financial markets so much in the news of late, or the public utilities in question in this bill.

For instance, on the wireline side of the telephone business, the OCC demonstrated in the service quality docket before PURA that the most recent 5-year information shows that AT&T earned over an average 36% annual return on equity in Connecticut, which it consistently exports via the average dividends of over $204 million it sends annually to its Texas AT&T parent.

The same financial audit also caused PURA to discover that AT&T had ignored long-outstanding PURA orders for AT&T to provide quarterly status reports when dividend payouts exceeded the 80% level of net income to ensure that the locally-based Telco was not drained of equity or profits by parent holding companies to the detriment of consumers.

Similarly, according to independent auditors hired by PURA, AT&T created a Nevada corporation to be a device for diverting and siphoning revenue away from Connecticut for the purpose of avoiding state taxes. PURA determined that the Connecticut subsidiary of AT&T has been paying millions of dollars to an AT&T affiliate in Nevada to use the company's trademarks on buildings and customer bills. These "intercompany royalties" totaled $144.5 million between June 2002 and December 2004, according to state regulators, and another $46.7 million last year, according to company financial statements. None of the payments was subject to the Connecticut income tax because the AT&T holding company receiving the royalties is in tax-free Nevada.

As noted above, the audit is invaluable in providing information that regulators need to get insight into the operations of the company that has the most telecommunications infrastructure in our public rights of way; the company whose infrastructure serves wireless, wireline, VOIP telecommunications, internet and cable providers in our state; the company that is the predominant wireline carrier in the state; the company that is the operator of our state's 911 system; in other words, the company that is the predominant telecommunications company in our state.

Section 2. Revision to 16-247a: State Telecom Vision

Conforming change.

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Section 3. Elimination of "Imputation standard" - Competitive Telecom Market for Business Consumers Will Be Put at Risk

The General Assembly would again act in the best interests of the state's telephone consumers by referring the issues in this bill to the Public Utilities Regulatory Authority for a contested-case investigative docket.

State government has a key role in ensuring that all telecom market participants can compete on a level playing field. The telephone companies are proposing a change to a pricing standard (called the "imputation standard) which is critically important to the development & operation of state's competitive telecom market. It is possible that a significant number of competitive telecom providers will find the market power of the telephone companies has created price squeezes that will be market entry hurdles too high to try marketing in Connecticut. Companies already operating here in the state may be driven out of business/out of the telecom market if this change is implemented.

The point is that there are no facts available to bolster the claims of the telephone companies that no harm will result from removing this economic market protection in place since 1994.

The telephone companies have had the right to request a waiver of the imputation standard from PURA since January 1, 2010, but have never filed for a docket at PURA to consider that change. The OCC has suggested in the past that if the telephone companies truly believe there will be market benefits to themselves, without injury to the market itself and the competitors operating in that market, it should petition PURA to open such a docket.

Rather than voting blindly without benefit of proven facts, the General Assembly should order PURA initiate a regulatory contested case proceeding to investigate the status of the imputation standard.

The law sets a floor on the rates that telephone companies can charge for their services that are determined to be competitive or emerging competitive. The floor is equal to (1) the rate the telephone company charges a competitor for the local network services that are noncompetitive or emerging competitive plus (2) the telephone company's incremental costs. For example, if a telephone company charges its competitors one cent per minute for providing local network services for business customers, the telephone company's total rate for a business customer cannot be less than this network charge plus the telephone company's added (incremental) cost in serving the customer.

While the concept of an imputation standard (aka, price floor to prevent prices squeezes by a dominate player in a market) may seem counterintuitive-- how could higher prices ever be better for consumers? But, economics dictates that under certain circumstances price floors for specific services integral to the workings of those services are critically necessary to grow and protect a competitive marketplace.

Therefore, the question before us is not what is wrong with the concept of an imputation standard; rather it is whether the current standard should remain in place? The OCC concedes that it does not have adequate information and data to be able to answer that question, but it we are very comfortable asserting that neither the ILECs nor the cable industry are a source of objective information on this topic.

Absent a more thorough review of the CT's existing imputation standard; the OCC believes that the state must exercise prudent judgment until policymakers and regulators have the information they need to make a reasoned decision. As things stand today, at a minimum, there is no evidence or knowledge concerning the most fundamental questions presented by this issue:

- What ILEC services would be impacted by this change,
- What telecom providers would be impacted by this change, and
- How the larger telecom market might be directly/indirectly impacted by this change.

Section 4. C.G.S. Section 247f (b): Three Sections Are Anti-consumer

1) C.G.S. Section 247f (b)(4):

Adds "broadband services" or "toll services provided by another carrier" [presumably intra- and interstate] to telecommunications services deemed "competitive services" :

As stated in the introduction to OCC's comments, this bill is a proposal by the telephone companies to deregulate their services in this state based on a claim that there exists sufficient competitive pressures in the telephone market to control market power abuses. In fact, there does not exist evidence sufficient to demonstrate that the massive market power currently possessed by the telephone companies will be adequately checked by competitive pressures in this state to prevent injury to consumers or the wholesale market.

It is this section of the state statutes that causes nearly all services provided by the two telephone companies to be "competitive" by law, though not in fact. This additional language from former incarnations of this bill simply adds more layers of reasons why any telephone service must be legally competitive.

While the OCC would argue that the existing statute has already distorted the market in anti-consumer ways that beg for updating to further protect consumers, industry claims that the Connecticut market has "robust competition" and thus plenty of alternatives for such customers for basic telephone service are completely disingenuous: they know perfectly well that there are no options for plain old telephone service (POTS) among the few providers offering telephone service of any kind to the residential market. There is no rational reason to further bury basic telephone service simply so the telephone companies can attempt to become completely deregulated.

2) C.G.S. Section 247f (c):

PURA- eliminates PURA's authority to reclassify "competitive services" as "noncompetitive"

As a further attempt to completely wall off PURA from any regulatory authority with regard to telephone services, this provision locks PURA out of ever investigating and ordered that a service has lost any competition, real competition, not just the "legal version" that is currently in place in basic telephone service in this state.

Obviously, the state's public utility regulator should have discretion to "balance" the level of regulation to be imposed on all utility services based on its expert analysis of the market and the competitive pressures present in it. It is absurd to prevent any service offered by a public utility to be literally a monopoly service, but for the regulator to lack the authority to impose regulatory pressure on that service.

The result will be the worst possible actor in a market: the unregulated monopoly.

There is no harm to the telephone companies or the market if this provision is stricken: if a "competitive service" loses competitors and is truly noncompetitive, then the provider will be a very satisfied and successful monopolist . . . and in the United States, economic capitalism recognizes that regulatory pressure operates best on such markets to produce a balance between profits and consumer benefits. The Legislature is best informed to provide PURA with continued authority to evaluate the competitive state of the telecommunications market in this state.

3) C.G.S. Section 247f (e): Elimination of Tariff Filings

The filing of tariffs is the only regulatory framework through which PURA and the OCC have legal ability to challenge telephone company price increases or any other changes they would propose to service terms and conditions. Without this structure, if the telephone companies proposed some dramatic change to its service, PURA and the OCC will lack the evidentiary basis to protect phone consumers. AT&T may correctly claim that PURA could request service tariff information from AT&T, but that will lead to long and drawn-out legal battles that only slow justice . . .

Here is a useful illustration. AT&T makes a business decision to significantly increase the rates it charges for POTS Plus 1 (basic phone service plus caller ID Caller ID). Without the existing retail tariffs, competitors and advocates cannot challenge such a change at PURA.

The ILECs have testified that CT residential consumers never review and do not derive any value from the requirement that AT&T and Verizon file tariffs with PURA. Respectfully, however, whether Mrs. Smith or Joe's Garage are reviewing AT&T tariffs at PURA is not the point. The filing of tariffs is the regulatory framework through which PURA and OCC have the required information and legal standing to properly evaluate and challenge ILEC prices changes.

Without such access to current pricing and service conditions, regulators will be forced into a weakened position from which to design any regulatory changes to service terms and conditions needed to effect public policy goals. For instance, without this structure, if AT&T proposed some dramatic change to a service it offers, PURA and OCC's ability to protect consumers from the improper use of great market power by the ILECS would be greatly reduced.

Here's a useful illustration which bears repeating here. Suppose AT&T makes a business decision to significantly increase the rates it charges for POTS Plus 1 (e.g., Voice Service Plus [any other service, such as "Caller ID"), a reasonable business decision in its interests and in a different statutory and regulatory structure it would be free to do. Without the existing retail tariff structure, PURA and OCC may not have the legal ability to challenge such a change.

If the ILECs think these comparable choices exist, PURA should review any information they can provide in a hearing on the topic. It would of course be important to receive information from the CLECs and other entities operating in the state as well since it may well be that there are alternatives existing, or if these changes go into effect in the future, perhaps CLECs might perceive a business opportunity and begin to provide service on this basic level.

Section 5. Withdrawal by Notice of Service Offerings

The introduction of these comments details the OCC's reasons for strongly opposing a legislative fiat declaring the market for basic telephone service to be so competitive that the only two providers of that service should be granted the right to withdraw at their own discretion with merely 30 days notice to the regulator.

The telephone companies will have an unfettered right, granted solely by legislative fiat without a regulatory investigation engaging all stakeholders, to 1) withdraw from local wireline basic telephone service, and 2) operate without quality of service standards or penalties. In the absence of true competition for basic telephone service, this bill will result in higher prices for most residential telephone customers across the state at a time when electric, natural gas, and cable rates have already skyrocketed.

The state's General Assembly would best serve the state's consumers by allowing the FCC proceeding on this issue,to thoroughly examine the issues presented by this bill authored by the state's two telephone companies and implement procedures to deliberately transition the nation's telephone system from its legacy systems to one Internet-protocol based, as requested by AT&T. Clearly, a national solution, requested by the proponent of this proposed state legislation, will be preferable to 50 states each enacting their own piecemeal versions of a transition plan.

Section 6. 16-247p, Quality of Service Regulations Restricted To Noncompetitive Services Only

The introduction of these comments details the OCC's reasons for strongly opposing a legislative fiat declaring that the only providers of basic telephone service in this state, the two telephone companies, will be granted the authority operate without quality of service standards or penalties. Once again, for most of the provisions of this bill to merit passage, actual competition in the market must exist, not merely in law. There has been no factual demonstration that there exists competition, i.e., actual options or alternative providers active in this market, for basic telephone service. In the absence of actual competition, removing quality of service regulations will allow provision of poor quality service without competitive pressure to regulate bad behavior.

A vote for this bill will be a legislative fiat in favor of the telephone companies that competitive pressure will successfully substitute for the quality of service standards imposed by PURA on the telephone companies in section 6. Indeed, service quality demonstrates how these companies view their investing strategies in this state: AT&T was fined over $1 million by PURA for failing to meet service quality standards over at least a period of 9 years. The company has not met those standards even after paying the penalty to the state treasury. If the company is willing to suffer sizable penalties for failing to meet quality of service penalties . . . ***how willing will the company be to invest in service quality in the absence of penalties ?***

AT&T in this state, and Verizon in other states (e.g., Virginia) have been subject to regulatory investigations concerning their provision of poor service quality over extended periods. AT&T was found by the Connecticut PURA to have missed its most primary service quality metric, **Out of Service (OOS)**, every month for 9 years running. After paying the state of Connecticut Treasurer over $500,000, AT&T has continued to fail to meet this vital metric. Instead, it has devoted time and energy to attempting to lower the standards for its performance of this metric.

Docket No. 08-07-15, *Petition Of The Office Of Consumer Counsel For Enforcement Of Quality Of Service Standards For The Southern New England Telephone Company d/b/a AT&T Connecticut, Petition*, Decision, July 24, 2008, at 10 (the AT&T Service Quality Decision").

> Conn. Agencies Regs. § 16-247g-2(a)(5) requires that 90 percent of all OOS repairs be cleared within 24 hours. Yet in every month from April 2001 through March 2008, the Telco has failed to meet this standard. As discussed in greater detail below, the Telco has neglected to file the required timetable with plans to address the problem during this same time period nor has the Telco applied to the Department for a waiver to excuse the Company from meeting the minimum standards.

Docket No. 10-04-12, *DPUC Proceeding Pursuant To Section 16-41 Of The General Statutes Of Connecticut To Determine Whether The Southern New England Telephone Company d/b/a AT&T Connecticut Should Be Fined For Failure To Comply With Quality Of Service Standards For The Provision Of Telecommunication Services*, Decision, March 2, 2011, at 2.

> On May 20, 2010, the Department issued a Notice of Violation and Assessment of Civil Penalty Against The Southern New England Telephone Company d/b/a AT&T Connecticut (Notice of Civil Penalty) pursuant to Conn. Gen. Stat. §16-41 against AT&T in the amount of $1,120,000. Conn. Gen. Stat. §16-41 provides that each public service company ". . . shall obey, observe and comply with all applicable . . . regulations adopted by the Department of Public Utility Control . . . as long as the same remains in force." Conn. Gen. Stat. § 16-41 further provides that any such public service company which the Department finds has failed to obey or comply with any such regulation shall be fined by order of the Department, and that each distinct violation of any such regulation be a separate offense.
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> The Department initiated Docket No. 08-07-15 to determine whether AT&T was in compliance with the quality of service standards outlined in Conn. Gen. Stat. §16-247p and Conn Agencies Regs.16-247g-2. As a result of its review, the Department determined that violations of Conn. Agencies Regs. §16-247-g-2(a) (5) had occurred. QOS Docket July 15, 2009 Decision, pp. 9-12, 21.

Section 7. 16-256k discounts or promotions

conforming change

Section 8. 16-18a, PURA/OCC consultants

conforming change

Section 9. 16-247j , PURA regulation

conforming change

Section 10. Bulk array of statutory changes

Unknown purpose for this section in this bill.

Section 11. 16-247i (PURA telecom report to E&T; reporting requirements for telephone companies); and 16-256: conforming change

The OCC opposes this section because it completely eviscerates the reporting requirements that have been imposed on the two Connecticut telephone companies for decades.

[Point of fact: The summary in the "statement of purpose" in the official copy of the bill on the CGA website misses the actual intent of this provision:

> "the bill proposes to eliminate the current requirement that the Department of Energy and Environmental Protection annually report to the General Assembly on the status of telecommunications service and regulation in the state."]

It is essential for states to implement state-specific reporting requirements in order for regulators to carry out state-specific policy objectives identified by the Legislature and through its own dockets and investigations of public utilities.

For instance, a point well-documented by the failures of the telephone companies by their restoration efforts over the last two years, it is beyond serious dispute that large-scale communications service outages jeopardize the public's health and safety. Likewise it cannot be gainsaid that such service outages greatly inconvenience the public and cause significant economic disruption, even when public health and safety are unaffected. States need to have ready, "always on" access to a database containing accurate information about communications service outages to maintain homeland security and emergency response functions.

Similarly, this state government must have access to such information in order to closely monitor the quality of service being provided to their citizens by communications providers subject to their jurisdiction, and to ensure that those communications service providers' marketing and advertising statements regarding the quality and availability of their services are not misleadingly or deceptively overblown or inaccurate.

While the price of service is a major factor in consumers' decisions regarding what provider to select, clearly non-price factors like service

quality, reliability, availability and adequate network maintenance and repair influence a consumer to select one particular provider (or communications technology) over another. Thus, it is critical for the state's regulators and advocates to have access to current information about these details in order to best protect and inform consumers about these regulated entities.

Information about service outages is necessary for state commissions and utility regulators to maintain a robust telecommunications infrastructure and monitor communications providers' service quality and marketing practices. States are as much concerned with network outages that affect their citizens' health and safety, and their local economies, as is the FCC or DHS.

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Highlights of analysis include:

Sec. 16-247i. Telecommunications service and regulation status report.

Sec. 16-247i(a)

(1) An analysis of universal service and any changes therein;

(2) an analysis of the impact, if any, of competition in telecommunications markets on the work force of the state and employment opportunities in the telecommunications industry in the state;

(3) an analysis of the level of regulation which the public interest requires;

And certainly not least of all since competition forms the heart of this proposed bill:

(5) the status of the development of competition for all telecommunications services;

Sec. 16-247i. (b) In compiling the information for this report, the department shall require, among other things, each telephone company to provide to the department annually a list of fundamental aspects of its quality of service and performance. This is essential to protect consumers.