



House of Representatives

General Assembly

File No. 159

January Session, 2001

Substitute House Bill No. 5177

House of Representatives, April 9, 2001

The Committee on Energy and Technology reported through REP. GIANNAROS of the 21st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING A COMPETITIVE CABLE SYSTEMS MARKET.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 16-331 of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (d) (1) An initial certificate issued prior to June 1, 1988, shall grant a
4 franchise for fifteen years, provided that for certificates issued prior to
5 January 1, 1975, the initial franchise term shall be deemed to end for
6 four such companies each year, starting in 1989, in order of those
7 companies having the highest gross revenues under chapter 211 or
8 212a during the calendar year ending December 31, 1982. An initial,
9 renewal or transfer certificate issued on or after June 1, 1988, shall
10 grant a franchise for a term of not less than five years and not more
11 than ten years, except that under special circumstances, as described in
12 subdivision (2), a franchise may be granted for a term of more than ten
13 years but not more than fifteen years. The department shall have the

14 discretion to determine the appropriate length of a franchise term,
15 initial, renewal or transfer, and in making its decision shall consider
16 the following without limitation: (A) The operator's past performance
17 in terms of meeting the needs of the cable-related community; (B) the
18 operator's past performance in terms of complying with the material
19 terms of the existing franchise; (C) the operator's compliance with
20 department regulations and the general statutes; (D) the ability of the
21 operator's management to properly operate the franchise; (E) the
22 operator's effectiveness in dealing with consumer requests, complaints
23 and billing questions or disputes; (F) the operator's effectiveness in
24 dealing with the advisory council; (G) the quality and diversity of the
25 operator's programming; (H) the quality of the operator's community
26 access programming, including public access, educational access and
27 governmental access programming, in accordance with the provisions
28 of subdivision (3) of this subsection; (I) the quality of the operator's
29 equipment and facilities; (J) the operator's proposals for future
30 extensions and upgrading to technologically advanced equipment,
31 facilities and systems; (K) the operator's past performance in terms of
32 meeting the needs of the cable-related community by providing
33 African-American and Hispanic programming; (L) the operator's good
34 faith efforts, as determined by the department, to provide service,
35 when practicable, to all customers within the service area; (M) the
36 operator's past performance in making available addressable
37 converters, traps or other devices or services which enable subscribers
38 to voluntarily block transmission of specific programming to their
39 homes or places of business; [and] (N) the [applicant's] operator's
40 provision of innovative services, including audio services, information
41 services, electronic publishing and information concerning the
42 proceedings of the General Assembly and legislative committees; and
43 (O) the extent to which the operator is or will be subject to active
44 market participation in the franchise area by another multichannel
45 video programming distributor, as defined in 47 CFR 76.1300, as
46 amended from time to time.

47 (2) Under special circumstances, the department in its discretion,
48 may issue, renew or transfer a franchise for a term of not more than
49 fifteen years if the franchisee has committed itself, as outlined in the
50 franchise agreement, to provide or maintain technologically advanced
51 equipment, facilities and systems, as determined by the department, to
52 enhance and promote technologically advanced educational
53 programming and to comply with specific quality of service standards,
54 including, but not limited to, the time between installation and repair
55 following a subscriber request, the response time to consumer
56 complaints and the quality of the operator's customer service policies
57 and practices.

58 (3) In evaluating the quality of community access programming the
59 department shall consider, without limitation, (A) compliance with
60 federal laws governing noncommercial educational broadcast stations
61 and public broadcast stations, and state laws governing community
62 access, including, but not limited to, sections 16-333-31 to 16-333-36,
63 inclusive, of the regulations of Connecticut state agencies; (B)
64 compliance with the terms of the franchise certificate, which apply to
65 community access; and (C) compliance with requirements involving
66 community access contained in any order of the department which
67 applies to the community antenna television system.

68 (4) If the department, on or after June 1, 1988, approves the transfer
69 of a certificate, the franchise term of such transferred certificate shall be
70 the remaining duration of the franchise term originally granted unless
71 the department grants a different term, the appropriate length of
72 which shall be determined by the department under this subsection. A
73 certificate may be renewed for an additional term, the appropriate
74 length of which shall be determined by the department under this
75 subsection, if the department finds that the holder of the certificate has
76 complied with the provisions of the Communications Act of 1934, 47
77 USC 546.

78 (5) The department shall adopt regulations, in accordance with
79 chapter 54, establishing procedures and standards for the renewal of
80 certificates issued to community antenna television companies. Such
81 regulations shall, without limitation, (A) incorporate the provisions of
82 the Communications Act of 1934, 47 USC 546, (B) require the
83 department to consult with the advisory council for the franchise area
84 served by the certificate holder before making a decision concerning
85 the renewal of the certificate, (C) require any holder of a certificate
86 which is not renewed by the department to continue to operate the
87 franchise for one year after the end of its term or until a successor is
88 chosen and ready to assume control of the franchise, whichever is
89 sooner, (D) establish standards for the content of notices sent to cable
90 subscribers concerning public hearings for franchise renewal
91 proceedings which standards shall include, without limitation, the
92 requirements specified in subdivision (6) of this subsection, (E)
93 establish standards to ensure that the costs and expenses of a
94 municipality constructing, purchasing or operating a community
95 antenna television company are accurately attributed to such
96 company, and (F) establish quality standards for the instructional and
97 educational channels. The department shall adopt regulations
98 pursuant to this subdivision in conjunction with the Commission for
99 Educational Technology.

100 (6) Any community antenna television company which applies to
101 the department for the renewal of a franchise shall: (A) Make available
102 for public inspection a copy of the company's proposal for renewal at
103 the town hall, each public library and the primary senior center, as
104 determined by the chief executive official of each municipality of its
105 franchise area and at the company's primary customer service center
106 and community access facility, and (B) notify each subscriber of any
107 public hearing for a franchise renewal, which notices shall be mailed
108 by first class mail to each subscriber not less than fourteen days in
109 advance of any public hearing and shall state in plain language the
110 time, place, date, address and subject matter of the hearing, and in

111 boldface print shall state that public participation is encouraged. The
112 notice shall also provide information concerning the locations where
113 the company's proposal for renewal may be reviewed, and shall not
114 contain any billing, promotional or extraneous information.

115 Sec. 2. Section 16-333o of the general statutes is repealed and the
116 following is substituted in lieu thereof:

117 (a) Upon the enactment of federal legislation authorizing rate
118 regulation of community antenna television companies, the
119 Department of Public Utility Control shall proceed to implement such
120 rate regulation as soon as practicable. The Department of Public Utility
121 Control shall develop a schedule and plan to implement such rate
122 regulation and shall submit them to the joint standing committee of the
123 General Assembly having cognizance of matters relating to public
124 utilities within ninety days of enactment of the federal legislation.

125 (b) Notwithstanding the provisions of subsection (a) of this section,
126 the department shall not regulate the rates of a company subject to
127 substantial competition in its franchise area by multichannel video
128 programming distributors, as defined in 47 CFR 76.1300, as amended
129 from time to time. As used in this subsection, "substantial competition"
130 means (1) that fewer than fifty per cent of the households in the
131 franchise area subscribe to the community antenna television company
132 that serves such area, or (2) effective competition, as defined in 47 USC
133 543.

134 Sec. 3. Section 12-256 of the general statutes is repealed and the
135 following is substituted in lieu thereof:

136 Each person carrying on an express business on railroads, each
137 person conducting a telegraph or cable business and each
138 multichannel video programming distributor, as defined in 47 CFR
139 76.1300, as amended from time to time, including each person
140 operating a community antenna television system under chapter 289,

141 shall pay an annual tax upon the gross earnings from (1) the routes in
142 this state in the case of any person carrying on such an express
143 business, (2) the lines in this state in the case of any person conducting
144 a telegraph or cable business, provided in the case of a person
145 conducting a telegraph business the tax imposed under this section
146 shall only be applicable with respect to a person conducting such
147 business, and the services offered by such person, subject to tax under
148 this section on January 1, 1986, and (3) the lines, facilities, apparatus
149 and auxiliary equipment in this state in the case of any person
150 operating a community antenna television system or other
151 multichannel video programming distribution service. No deduction
152 shall be allowed from such gross earnings from operations for
153 commissions, rebates or other payments, except such refunds as arise
154 from errors or overcharges. Each such person shall, on or before April
155 first, annually, render to the Commissioner of Revenue Services a
156 return signed by the treasurer, or the person performing the duties of
157 treasurer, or an authorized agent or officer of the business or system
158 operated by such person, on forms prescribed or furnished by the
159 commissioner specifying: The name and location within this state of
160 such business or system or, if it has no location within this state, where
161 such business or system is located; the total amount of gross earnings
162 subject to the tax imposed under this section for the year ending the
163 thirty-first day of December next preceding or for each lesser period of
164 consecutive time during such year, each such year or period being in
165 this chapter and chapter 212a called a "tax year", in which business or
166 operations were carried on in this state; the total miles of railway
167 routes which each of the persons doing an express business was
168 entitled to operate under contracts with railroad companies and the
169 number of miles of such railway routes within this state on the first
170 day and on the last day of the tax year; the total miles of wires
171 operated by each of the persons conducting a telegraph or cable
172 business or operating a community antenna television system and the
173 total miles of such wires operated within this state on the first day and

174 on the last day of the tax year.

ET *JOINT FAVORABLE SUBST.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Revenue Gain

Affected Agencies: Department of Revenue Services, Department of Public Utility Control

Municipal Impact: None

Explanation

State Impact:

The bill is anticipated to generate an annual General Fund revenue gain of approximately \$2.1 million beginning in FY 02 as a result of extending the gross receipts tax on Community Antenna Television (CATV) to other video providers such as Direct Broadcast Satellite (DBS) and Satellite Master Antenna Television (SMATV) providers. The estimate is based on DBS and SMATV providers currently having roughly 7% of the total subscription television market, which equals approximately \$42 million in gross receipts for FY 02.

The bill makes a variety of other changes, which have no fiscal impact on the Department of Public Utility Control.

OLR BILL ANALYSIS

sHB 5177

AN ACT CONCERNING A COMPETITIVE CABLE SYSTEMS MARKET.

SUMMARY:

This bill expands the factors the Department of Public Utility Control (DPUC) must consider in setting a cable company's franchise period to include the extent to which the company is or will be subject to competition from other cable companies and other video providers such as Direct Broadcast Satellite (DBS) and Satellite Master Antenna Television (SMATV).

The bill extends the cable company gross receipts tax to cover DBS, SMATV, and the other video providers, based on the gross earnings from facilities located in the state.

The bill ends DPUC's authority to regulate cable TV rates once a company becomes subject to significant competition. Under federal law, DPUC's (1) authority is limited to rates for basic cable service, (2) regulation must be consistent with Federal Communications Commission rules, and (3) regulatory role ends when the company demonstrates that it is subject to "effective competition," a somewhat higher standard than imposed by the bill.

EFFECTIVE DATE: October 1, 2001

RATE REGULATION

Under federal law, cable TV franchising authorities (in Connecticut, the DPUC) can regulate cable TV rates to a limited degree. This power ends when a cable company demonstrates that it is subject to "effective competition," as defined by federal law. This bill ends the department's rate-setting authority, under state law, when this condition is met or fewer than one half of the households subscribe to

the company's services.

BACKGROUND

Effective Competition

Under federal law, a cable company is subject to effective competition when:

1. fewer than 30% of the households in the franchise area subscribe to its service;
2. the franchise area is served by at least two unaffiliated competitors who each offer service to at least 50% of the households, and at least 15% of the households subscribe to the competitors' service;
3. a system operated by the franchising authority offers service to at least 50% of the households; or
4. the local telephone company provides cable service to the area that is comparable to what the cable company offers (47 USC § 543).

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute
Yea 13 Nay 0