



STATEMENT OF AT&T CONNECTICUT

**Regarding Raised House Bill No. 6592
AN ACT CONCERNING THE OPERATIONS OF THE DEPARTMENT OF
PUBLIC UTILITY CONTROL
Before the Committee on Energy and Technology
March 15, 2011**

Proposal:

Raised House Bill No. 6592 would expand the Department of Public Utility Control's authority in several ways. Most significantly, it would expand the Department's jurisdiction to investigate "covered entities" and "covered entity applicants" – categories that would now include wireless carriers. Section 12 significantly expands existing Connecticut law. Section 14 would include certified competitive video service providers in the list of "regulated" companies assessed to cover expenses of the Department and the Office of Consumer Counsel. Section 17 would expand the authority of the DPUC to include wireless carriers and the definition of a "person" to include "an unincorporated organization or other entity." Sections 18 and 19 would expand the powers of the DPUC to enter a company's property, require the production of documents, and conduct wide-ranging investigations upon nothing more than a "belief". Section 20 would add a statute which prohibits "covered entities" or "covered entity applicants" from making false or misleading statements, or omitting any material facts during any hearing, proceeding, investigation, or audit.

Comments:

AT&T opposes portions of this Bill, specifically sections 12, 14, and 17 through 20. AT&T believes that the broad expansion of jurisdiction and additional financial obligations contemplated by this Bill are inconsistent with the competitive environment and unduly burdensome to businesses operating not only in a competitive environment, but also a challenging economic climate. Moreover, in some cases, the proposed bill is inconsistent with federal law. Most importantly, this Bill seeks to add regulatory oversight, and thus cost and delay, in areas where no need for regulation has been demonstrated; in fact, where competition is working effectively. AT&T's specific comments follow.

Section 12:

Section 12 expands existing Connecticut General Statutes ("Conn. Gen. Stat.") Section 16-4, which provides for civil penalties, in two major ways. First, the Bill adds a new category of "person" that could be held liable under the provision. Based on the definition of "person," as amended in section 17 below, this "person" could include any individual or corporation, or "other entity." This definition of "person" is overbroad and ambiguous, making any individual or entity potentially subject to a penalty, while leaving it uncertain as to what entities that could be.

Section 12 would also add two additional penalties under section 16-41. In addition to the penalty currently contemplated under section 16-41, section 12 would allow the Department to order "restitution" or "disgorgement" or both. Neither "restitution" nor

“disgorgement” is defined, and thus the proposed bill is impermissibly broad and ambiguous. To the extent the proposed change seeks to add “restitution” and/or “disgorgement” to the “prescribed” penalty referenced in the current section 16-41, the change could conflict with that “prescribed penalty”. And adding another penalty of “restitution” and/or “disgorgement” would constitute a double penalty for the same conduct.

Section 14:

Section 14 would expand Conn. Gen. Stat. Section 16-49 to include certified competitive video service providers to the list of “regulated” companies assessed to cover expenses of the Department and the Office of Consumer Counsel. AT&T Connecticut is both a competitive video service provider and a “telephone company.” The language as currently drafted could potentially subject companies that are both public service providers and competitive video providers to a double assessment on revenues.

Section 17:

Section 17 amends the current definition of “person” in Conn. Gen. Stat. Section 16-1 to include an “unincorporated organization or other entity.” AT&T opposes this change as the language is extremely broad and undefined and could extend the Department’s jurisdiction to entities that are not appropriately subject to its jurisdiction.

Section 17 also adds two new definitions: “covered entity” and “covered entity applicant,” apparently in connection with the proposed expansion of Department authority addressed in sections 18, 19, and 20 of the Bill. Again, the proposed definitions are broad, adding wireless and video providers to both definitions, thus impermissibly extending the Department’s authority over wireless carriers, and expanding the Department’s jurisdiction over video providers. Wireless service is interstate in nature, and wireless carriers are licensed by the Federal Communications Commission (“FCC”), and subject to its jurisdiction. Under federal law, a state cannot regulate market entry or rates charged by a wireless carrier. In fact, the Department has recognized that jurisdiction over wireless carriers belongs to the FCC. In addition, adding video providers under the definition of “covered entity” could create conflict with existing statutory provisions that establish the parameters of the Department’s jurisdiction over video.

Section 18:

Section 18 would give the Department broad authority to enter the premises – not only of public service companies and electric suppliers – but also any “covered entity” or “covered entity applicant.” This section would give the Department broad authority to enter the premises of entities, such as wireless carriers, that are not subject to regulation by the Department; moreover, such broad ability to enter the premises of these companies is not supported by any legitimate public safety concerns.

In addition, section 18 adds a new subsection (b) that would give the Department broad rights to examine the records of all covered entities and covered entity applicants, "provided the department deems such examination in the public interest." This proposed language raises legitimate due process and privacy issues. The language provides no requirement of notice and gives the affected no opportunity to be heard. Instead, the Department can gain access to records simply upon its own determination that an examination is "in the public interest," and the language would require companies to provide copies to the Department on its request.

The proposed language is overly broad and unnecessary. Current statutes and regulations already give the Department the ability to request documents from companies, while at the same time providing companies an opportunity to object to such requests, and seek protection of documents considered proprietary or confidential.

Section 19:

Section 19 is similarly unnecessary. Section 19 would give the Department the ability to conduct investigations and hearings if the Department "believes" that any covered entity or covered entity applicant "has violated any provision of title 16 of the general statutes." This language is overly broad in that it would allow the Department to conduct an investigation and hearing upon simple "belief." Nothing would prevent the Department from conducting fishing expeditions on any possible issue that could be covered by any of the numerous statutes under title 16.

The Department has the requisite authority under existing statutes to investigate and conduct hearings as needed to enforce its jurisdiction. Moreover, under existing administrative law procedure, it has the ability to call witnesses and request documents.

Section 20:

Section 20 is another new statute that would prohibit "covered entities" or "covered entity applicants" from making false or misleading statements, or omitting any material facts during any hearing, proceeding, investigation or audit. Again, there is no need for this provision, as existing law already prohibits the making of false statements, and gives the Department the ability to address them if they occur. In addition, subsection (b) is overly broad and ambiguous as it could be interpreted to require entities to correct an immaterial misstatement even years after a proceeding, investigation, or audit has been completed. Again, this provision is not needed, as under current law parties have an obligation to supplement and update any facts and statements, as necessary, during the course of a proceeding.

Conclusion:

AT&T opposes Raised House Bill 6592.