

TESTIMONY OF

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My name is Bill Durand. I am the Executive Vice President and Chief Counsel of the New England Cable & Telecommunications Association, Inc. (NECTA). NECTA respectfully submits this testimony in opposition to sections of Raised Bill 1024 with suggestions and support for other sections.

NECTA supports the concept of modernizing the state's telecommunications statutes to bring them in line with new technologies in today's marketplace, but not at the potential expense of competition and innovation. In its current form, SB 1024 should be amended to ensure that Connecticut's customers continue to realize the benefits of robust competition in the retail voice market. Such benefits have resulted from the market-opening provisions of Connecticut's Telecommunications Act ("Act") that aimed to reduce anticompetitive behavior by carriers with market power over the wholesale inputs necessary to support retail voice competition. As proposed, SB 1024 achieves the opposite result. NECTA therefore opposes language in Sections 1, 3, 4, and 5 of SB 1024 that have the effect of deregulating the terms, conditions, and pricing protections of wholesale services and effectively eliminate the Department's oversight of such services.

Section 1 & 4

First, Section 1 of SB 1024, as currently drafted, includes broad language that would reclassify all services offered by telephone companies and telecommunications providers before July 1, 1994 to be competitive. Because the language in this section makes no distinction between retail and wholesale services, it could potentially reclassify as competitive all wholesale services that are currently treated as non-competitive. Such a broad reclassification would have far-reaching negative implications for Connecticut's consumers.

Most wholesale services provided by Incumbent Local Exchange Carriers ("ILECs") would become deregulated because ILECs would likely interpret their deregulation broadly by asserting that versions of all their services were offered before July 1, 1994. Many of such wholesale services are currently treated as non-competitive by the Department and are therefore subject to more stringent regulatory oversight and notice provisions. Such services include interconnection services that require telecommunications carriers to provide access to their network by other requesting telecommunications service providers.

As the FCC and the Department have found on numerous occasions, interconnection is the cornerstone of competition and must be protected because carriers, especially those with market power, have incentives to undermine competition to retain that market power. Without interconnection, customers of one carrier would be unable to reach customers of a competing carrier. And competitors seeking to enter the market would face impediments. Included under the penumbra of "interconnection" is local number portability, dialing parity,

directory assistance, directory listing, the ability for competitors to purchase facilities and a host of other carrier services at reasonable prices and on reasonable terms that have enabled competition in Connecticut to flourish since 1996 and the passage of the Federal Telecommunications Act.

ILEC's remain the largest voice service providers in the state and the only carriers operating ubiquitous networks with control over the bulk of access services provided in the State. ILECs are also the only carriers in the state that are required to interconnect with every other every other carrier. The wholesale services that ILECs provide are therefore often the only technically and economically feasible way for competing carriers to enter the market, exchange traffic, and to offer competitively-priced and high quality retail services. But if these services automatically become competitive and detariffed (as discussed below), ILECs could raise rates, impose unreasonable conditions, and engage in other anticompetitive conduct that the Department would have little authority to address.

Connecticut has already experienced the negative implications of allowing an ILEC choose the price for a non-competitive service. For example, before the Department required AT&T to reduce its transit charges and deemed AT&T's transit services to be non-competitive in Connecticut last year, AT&T's transit charges in the state were the highest among its service territories by multiples. Transit charges are fees that carriers pay for traffic they send through AT&T's network to another third party carrier. Without reasonably-priced transit services, each carrier would have to negotiate a direct connection with every other carrier in the state, which is impractical if not impossible, burdensome, and inefficient. Before the

Department acted, NECTA members were forced to pay AT&T's unreasonable and exorbitant transit charges. AT&T is currently appealing the Department's order.

Broad reclassification of wholesale services as competitive, coupled with detariffing, and lifting of price restrictions on operations support systems as proposed by SB 1024 could eliminate the competitive protections existing under the Department's rules and orders and in the interconnection agreements between carriers.

Second, SB 1024 would require carriers to detariff all of their competitive services. As a result, all existing tariffs filed at the DPUC would be withdrawn and replaced by customer service guides. This approach is too broad, and fails to consider the important distinction between tariffs for retail services and the wholesale services necessary to permit providers to compete for Connecticut customers in the voice marketplace. Carriers often rely on wholesale tariffs to purchase services from one another through means that are easier and faster than having to negotiate specific terms and conditions with all other carriers for wholesale services, including related to compensation that carriers pay one another for the exchange of traffic.

Wholesale tariffs also provide payment protections for carriers through the "filed rate doctrine." Customer service guides would not suffice for the complex services that today's carriers provide to each other. This would result in increased disputes and litigation expenses that would further tax Connecticut's already stretched resources ultimately leading to decreased services to consumers. Existing rules for tariffing for wholesale services should be maintained by excluding

wholesale or carrier-to-carrier services from the deregulation provisions of SB 1024.

As for retail tariffs, NECTA support allowing permissive tariffs. Retail carriers, especially those serving business customers often voluntarily choose to tariff otherwise detariffed services as a convenience to customers. Maintaining permissive retail tariffs and mandatory wholesale tariffs would appropriately balance the goal to maintain Connecticut's competitive momentum while providing each carrier the option to choose the manner in which it communicates its service rates and terms to its retail customers.

Third, SB 1024 also removes the current statutory protection that ensures the rates that telephone companies "charge themselves" for using parts of their network to serve retail customers are in parity with the rates telephone companies charge competitors for the same service. Like interconnection, parity treatment of the telephone companies' retail and wholesale customers is essential for competition. The Legislature understood that telephone companies have every incentive to undermine competitors' ability to offer reasonably priced retail services. Eliminating this provision in the law could create incentive for telephone companies (ILECs) to force their competitors to raise customer rates. This result would be inconsistent with the public interest and the goal of universal service because it would create entry barriers and impede carriers' ability to compete on a level playing field. The so-called "pricing standard" in the current statute must be retained to ensure the thriving competitive marketplace that helps reduce costs in CT by offering an alternative to monopoly service.

Section 3

SB 1024 would also eliminate the requirement for telephone companies to provide a state-level financial audit and instead provide a parent company audit along with their annual report to the DPUC when the telephone company has a parent company audited at a higher level under FCC rules. The DPUC still could request a state-level audit under certain conditions. NECTA does not oppose this provision, but notes that it should also be extended to eliminate audits for cable companies.

Section 5

Finally, SB 1024 would allow telephone companies to stop providing a retail service on 30 days notice to the DPUC and presumably to customers. This would replace the current provision requiring an application to the DPUC and ensuing review of that application. As stated above, NECTA member companies that are not telecommunications service providers purchase retail business services from Connecticut's phone companies. Such services are often used as inputs for or compliments to NECTA member's retail voice services. Here too NECTA opposes the proposed change in SB 1024 because thirty days is insufficient to arrange for alternative services, particularly if facilities construction is required for that alternative service. Insufficient notice of withdrawal could result in leaving customers stranded and without service.

NECTA appreciates the opportunity to comment on SB 1024. Thank you.