

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

DPUC INVESTIGATION OF THE TERMS : DOCKET NO. 05-06-12
AND CONDITIONS UNDER WHICH VIDEO :
PRODUCTS MAY BE OFFERED BY :
CONNECTICUT'S INCUMBENT LOCAL :
EXCHANGE COMPANIES : MARCH 6, 2006

**REPLY BRIEF OF NEW ENGLAND
CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC.**

I. INTRODUCTION

The Initial Brief of the New England Cable and Telecommunications Association, Inc. ("NECTA" and "NECTA Brief") comprehensively addressed the regulatory requirements applicable to incumbent local exchange carriers ("ILECs") that offer video programming services over their Connecticut facilities. This Reply Brief focuses on arguments in the Initial Brief of AT&T, Inc. ("AT&T") through its Connecticut affiliate, AT&T Connecticut f/k/a SBC Connecticut ("Telco") ("AT&T Brief").¹ Review of the Initial Briefs of AT&T and the other parties reveals the following key conclusions:

- All parties, including the public parties with a firm interest in advocating wireline video competition, agree that AT&T cannot legally, and should not as a policy matter, receive a unique exemption from cable regulation.² AT&T fails to prove that all its video services would be "interactive on-demand services" and, as such, its network will not be exempt from the definition of a "cable system."

¹ The NECTA Reply Brief also addresses issues in the Initial Briefs of the Attorney General ("AG" and "AG Brief"); Office of Consumer Counsel ("OCC" and "OCC Brief"); Cablevision of Connecticut, L.P., Cablevision of Southern Connecticut, L.P., and Cablevision of Litchfield, Inc. (collectively, "Cablevision" and "Cablevision Brief"); Charter Communications Entertainment I, LLC ("Charter" and "Charter Brief"); and CoxCom, Inc. d/b/a Cox Communications New England ("Cox" and "Cox Brief").

² See AG Brief at 3-6; OCC Brief at 2-7; Cablevision Brief at 4-19; Cox Brief at 1; Charter Brief at 1-2; see also Tr. 48-52 (testimony of ANCC Chairperson supporting cable regulation of AT&T).

- As predicted by NECTA,³ the AT&T Brief ignores the federal statutes that regulate video programming by telephone companies⁴ and the statute that forbids local franchising authorities (“LFAs”) from regulating video transmission technology.⁵ AT&T’s failure to address these statutes, even though raised by cable parties throughout this Docket and are outcome-determinative, illustrates the patent flaws in AT&T’s statutory analysis.
- The claims that AT&T’s network falls outside of the federal and state “cable services” definitions conflict with statutory text, case law, the factual record and common sense. AT&T’s network is like a modern cable system, and it should be regulated as such.
- AT&T fails to show that its entry into the Connecticut marketplace without a franchise would serve the public interest. The record evidence reflects that such entry would harm the public interest.

As analyzed in NECTA’s Brief and discussed below, AT&T’s federal law arguments have no merit whatsoever and should be rejected as a matter of law, sound regulatory policy and prudential considerations. This Docket is not groundbreaking, as the FCC has had AT&T’s arguments under review for nearly two years and has taken no action to date.⁶ AT&T’s policy arguments have been argued before Congress in multiple

³ See NECTA Brief at 1, 7-8, 12-13.

⁴ 47 U.S.C. § 522(7)(C) and §§ 571-73; see also In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended, MB Docket No. 05-311, Notice of Proposed Rulemaking, at ¶ 2 (rel. Nov. 18, 2005) (hereinafter “05-311 NPRM”).

⁵ 47 U.S.C. § 544(e); see NECTA Brief at 12-13; see also In the Matter of Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Report and Order, 14 FCC Red 5296 (rel. March 29, 1999) (“...the legislative history clearly states that [Section 544(e)] prevents states or LFAs from regulating in the areas of technical standards, customer equipment, and transmission technologies”); Decision, Docket No. 95-04-26, Application of TCI Cablevision of Central Connecticut/Vernon for Franchise Renewal (Aug. 27, 1997) at 20 (“Due to preemption by the Telecommunications Act of 1996, the Department declines to prescribe the exact type of technology that should be employed by the [cable operator]”).

⁶ At the recent Bear Stearns conference, FCC Chairman Kevin Martin addressed the merits of AT&T’s claims to be able to bypass cable franchise requirements, and stated that AT&T’s service would need to be “fully on-demand and fully interactive to truly qualify as an Internet-based service.” See 47 U.S.C. § 522(7)(C), § 522(12). As discussed below, AT&T has stipulated that it cannot meet the interactive on-demand networks exception to the definition of “cable system.”

forums. AT&T also has already obtained a state level cable franchise in Texas.⁷ The only novel consequence of this Docket would be if the Department construes federal law to exempt all two-way providers from cable regulation, as AT&T argues, ending cable franchising as we know it.⁸

II. ARGUMENT

A. **AT&T is Subject to Cable Television Regulation in Connecticut as a Matter of Law.**

1. AT&T Ignores Applicable Federal Statutes That Regulate Telco-Delivered Video Programming as a Cable System.

AT&T's filings have consistently ignored the federal statutes that, since 1996, have applied cable television regulation to the "facilities" of "common carriers" whenever used to deliver "video programming" to "subscribers."⁹ AT&T's lengthy Brief contains no reference to 47 U.S.C. § 522(7)(C) or 47 U.S.C. §§ 571-73, even though (1) these statutes were the focus of much of the testimony and comments in this Docket,¹⁰

⁷ See LFE-11.

⁸ See Cablevision Brief at 2, 19-20 (noting that AT&T's arguments, if successful, will apply to cable operators as well).

⁹ NECTA Brief at 7-8; see 47 U.S.C. § 522(7)(C) (classifying as a "cable system" a facility of a common carrier "to the extent such facility is used in the transmission of video programming directly to subscribers..."); 47 U.S.C. §§ 571-73 (governing "Video Programming Services Provided By Telephone Companies"). Telephone companies also can offer video programming using one of three alternative MVPD entry paths: common carrier channel service; Open Video System ("OVS"); or MMDS wireless video. See 47 U.S.C. §§ 571-573 ("Video Programming Services Provided by Telephone Companies"); see also 47 U.S.C. § 571(a)(1) (regarding radio-based systems); 47 U.S.C. § 571(a)(2) (regarding common carriage of video traffic); 47 U.S.C. § 571(a)(3)(B) (regarding OVS).

¹⁰ See, e.g., NECTA Brief at 1-2, 6-8; NECTA Initial Comments at 35-37; NECTA Reply Comments at 8, 11-12; Krauss Reply PFT at 22-23; Cablevision Initial Comments at 12; Cablevision Reply Comments at 9; Cablevision Brief at 8, 9-10; Cox Initial Comments at 8-9; Cox Reply Comments at 1.

and (2) AT&T initially relied on 47 U.S.C. § 522(7)(C).¹¹ No credible evaluation of this Docket would disregard these plainly applicable statutes.¹²

Similarly, application of these statutes to AT&T is fully appropriate. Telephone companies had been barred from owning cable systems until the 1996 Act eliminated this prohibition and, instead, permitted ILEC entry into video markets as cable television operators or entrants under the three other MVPD schemes.¹³ If AT&T believes that these limitations do not suit its business agenda, its recourse is with Congress.

2. AT&T Has Ignored the Federal Statutes and Cases that Preclude Local Franchising Authorities from Regulating Choices of Transmission Technology.

As predicted,¹⁴ AT&T also has ignored the federal statute, 47 U.S.C. § 544(e), that precludes LFAs from taking action to “prohibit, condition or restrict” the transmission technology employed by a cable system.¹⁵ The AT&T Brief also did not address the federal and state precedents that LFAs may not express a preference for a particular transmission technology.¹⁶ The statute and cases eviscerate AT&T’s

¹¹ See AT&T Initial Comments at 5-6; compare AT&T Reply Comments at 12-23; Boyer PFT *passim*; Boyer Reply PFT *passim* (all omitting any mention of 47 U.S.C. § 522(7)(C)). AT&T’s Initial Comments contended that AT&T met the cable exemption applicable to “interactive on-demand services,” but thereafter ignored § 522(7)(C) once AT&T realized it could not qualify for the exemption.

¹² Tr. 172, 239 (Boyer testimony stipulating to factual predicates for application of these statutes); see also Cablevision Brief at 11-13 (observing that the Department is preempted from establishing a new class of MVPD for AT&T that goes beyond the four categories established in 47 U.S.C. § 571).

¹³ Cablevision Brief at 9-10; see 05-311 NPRM, at ¶ 2 (“The Communications Act provides new entrants four options for entry into the MVPD market. They can provide video programming to subscribers via radio communication, a cable system, or an open video system, or they can provide transmission of video programming on a common carrier basis.”) (emphasis added).

¹⁴ NECTA Brief at 12-13.

¹⁵ Section 544(e) reads in pertinent part as follows: “No State or franchising authority may prohibit, condition or restrict a cable system’s use of subscriber equipment or any transmission technology.”

¹⁶ See NECTA Brief at 13 n. 44; see also note 5 *supra* (citing cases).

unsupported argument (discussed infra) that it can avoid cable regulation by selecting a transmission technology that uses switched IP packets compared to MPEG-2 packets.

AT&T claims that Title VI is not technology neutral, contending that Congress indeed has “explicitly differentiated between ‘cable service’ [interpreted by AT&T to apply only to “the technical characteristics of traditional cable companies”] and other services based on the technology used in programming delivery.”¹⁷ This argument is wholly circular in light of (1) the definition of “cable service” does not concern technology but simply references the form of service, e.g., one-way transmission of video programming, plus subscriber interaction;¹⁸ (2) the definition of “cable system” references technology characteristics which do not exempt AT&T;¹⁹ (3) the unaddressed presence of § 544(e) and implementing case law by the FCC and the Department;²⁰ (4) the lack of any FCC or judicial authority cited to support AT&T’s interpretation; and (5) the replacement of “traditional” cable systems by modern two-way cable networks.²¹

¹⁷ AT&T Brief at 11.

¹⁸ See 47 U.S.C. § 522(6).

¹⁹ See 47 U.S.C. §§ 522(7) & (A)-(E) (general cable system definition and exemptions from general definition).

²⁰ See note 5 supra and accompanying text.

²¹ See NECTA Brief at Appendix A (two-way cases). AT&T’s discussion on p. 11 misstates NECTA’s arguments. Cable regulation applies to AT&T’s network because it falls within the definitions of “cable systems,” “video programming” and “cable service.” NECTA does not argue that AT&T’s services “must be regulated like cable service because the two are indistinguishable to the customer.” Id. That the two services are identical to the customer - - making them “like services” under a Title II test - - does foreclose any special treatment under the Vonage line of cases. See NECTA Brief at 14-15.

If AT&T is correct, all cable operators would have been deregulated years ago. They have not been because they, like AT&T, provide “one way transmission of video programming” and “subscriber interaction” needed to select and receive programming.²²

3. **AT&T’s Network is a Modern Cable Network That Delivers “Cable Service” under Federal and State Law.**

AT&T seeks to prove that its video service should be considered a “two-way” rather than “one-way” service and, therefore, falls outside the definition of “cable service” in 47 U.S.C. § 522(6) and General Statutes § 16-1(a)(15). AT&T’s legal and factual arguments do not hold up and should be rejected, just as the FCC has failed to give them any favorable consideration in the two years since the FCC initiated the IP-Enabled Services docket and subsequent ILEC entry dockets.²³

a. **AT&T’s Efforts to Confuse the Issues through Jargon and Inapposite Arguments Are Not Successful.**

AT&T seeks to support its arguments by referring to its network using a host of jargon-laden, technology-oriented phrases, such as “point to point,” “dynamic,” “next generation,” “switched IP,” “interactive functionality,” “network and server centric” and “innovative IP-enabled.”²⁴ When one cuts through the rhetorical flourishes, the record reflects that AT&T’s planned video network is “one-way” in the same manner as modern

²² 47 U.S.C. § 522(6); General Statutes § 16-1(a)(15).

²³ See AG Brief at 3-4; Cablevision Brief at 4-9; NECTA Brief at 9-11 (rebutting AT&T’s arguments regarding cable system definition); see also 05-311 NPRM; In the Matter of Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services, WC Docket No. 04-29, Memorandum Opinion and Order (rel. May 5, 2005) (dismissing AT&T’s petition requesting a ruling that its video services should be part of its “IP Platform Services” regulated exclusively under Title I on ripeness grounds because AT&T refused to take definitive positions that the statutes and regulations to be waived actually applied to its services).

²⁴ AT&T Brief at 6, 14, 15, 18, 27, 30 (“point-to-point”); 2, 7, 29, 30 (“dynamic”); 1 (“next generation”); 2, 6, 10, 14, 15, 18, 22, 27, 29 (“switched” IP); 7 (“interactive functionality”); 10 (“network and server centric”); 1, 3, 12, 30 (“innovative IP enabled”).

cable networks and provides “cable service,” namely, (1) AT&T’s video programming will only travel “one-way” from AT&T’s video servers to the subscriber premises, (2) subscribers will interact using remote controls to select the video programming, and (3) the only other signals from the subscriber upstream to network are routine network management signals not controlled by the subscriber.²⁵ If AT&T’s video service is deemed to be outside of the federal definition of cable service, then virtually all video services provided by Connecticut cable operators will also be freed from regulation.²⁶

AT&T’s jargon is either inaccurate or creates distinctions without a difference. For example, there is nothing “point-to-point” about AT&T’s video network – rather, AT&T employs “one-to-many” distribution of video programming, just like cable operators.²⁷ AT&T customers are not sending video programming streams to each other.²⁸ Moreover, AT&T itself is not sending individualized point-to-point streams to each customer, even though it claims to be doing so.²⁹ Rather, AT&T is using an IP “multicast” protocol to transmit the same programming to multiple receivers simultaneously.³⁰ The distinction between “broadcasting” and “multicasting” is immaterial, since “broadcasting to all subscribers” is not required in the definitions of

²⁵ Tr. 188-93; see also Krauss PFT at 5.

²⁶ If such were the case, NECTA’s members would be owed a significant refund of gross earnings tax payments under General Statute §12-25b as their revenue would not be from “cable service.”

²⁷ Krauss Reply PFT at 2; Tr. 360 (Krauss testimony).

²⁸ Krauss Reply PFT at 11.

²⁹ Krauss Reply PFT at 9-12; see de Veciana PFT at 4 (“a user of SBC . . . must interact with the network to set up a new flow of information, i.e., a new data stream”); Boyer PFT at 16 (“point-to-point . . . architecture designed to send each subscriber only the programming the subscriber chooses to view”); AT&T Brief at 14, 18.

³⁰ Krauss Reply PFT at 9-12.

“cable system” or “cable service.”³¹ Transmission to multiple “subscribers,” is required, and AT&T certainly does that.³²

The references to “switched video” refers to AT&T’s decision to conserve bandwidth by allowing AT&T’s servers to send only programming that is requested to a viewer’s television set, using IP multicast.³³ Use of switching does not change the one-way nature of the video programming service.³⁴ Apart from subscriber selection, routine network management messages are the only signals traveling back to the network.

The references to “dynamic” characterize the same routine network messages. Cable systems have similar types of routine network signals associated with respect to their video-on-demand platforms and other services.³⁵ AT&T seeks to imply that its network involves more of such routine communications than cable systems, but such fact (even if true) is immaterial to the legal analysis.

Finally, AT&T repeatedly refers to its “on-demand network.”³⁶ The only legally recognized on-demand network is an “interactive on-demand network” that excludes any prescheduled programming.³⁷ AT&T stipulated to the use of prescheduled programming

³¹ See 47 U.S.C. § 522(6) and (7).

³² See 47 U.S.C. § 522(6).

³³ AT&T Brief at 13.

³⁴ See Krauss Reply PFT at 8-9.

³⁵ Krauss PFT at 9-10.

³⁶ AT&T Brief at 14, 18, 30.

³⁷ See 47 U.S.C. § 522(7)(C) (creating exemption for on-demand networks); § 522(12) (defining on-demand networks eligible for the exemption).

and cannot qualify for that exemption.³⁸ Moreover, true on-demand programming enables a subscriber to fast-forward over commercials, and not even AT&T claims that its customers will be able to do that on live broadcast programs.

b. Brand X and Cable Modem Decisions Provide No Assistance to AT&T.

AT&T seeks to support its arguments by reference to the United States Supreme Court's Brand X³⁹ decision and the FCC's Cable Modem Order.⁴⁰ AT&T's video service, however, does not fit into any of the categories addressed in these precedents. The Cable Modem Order states that "...the one-way transmission requirement in [47 U.S.C. § 522(6)(A)] continues to require that the cable operator be in control of selecting and distributing content to subscribers and that the content be available to all subscribers generally."⁴¹ AT&T's subscribers are making choices regarding the content "controlled by" (i.e., purchased and made available to them) by AT&T.

Moreover, in the Cable Modem Order, cable modem service was found not to be a cable service because subscribers could send and receive data on a two-way basis. The FCC stated that cable modem service is "... a service built around Internet access, which, among other things, allows subscribers to define searches for information throughout the World Wide Web, query web sites for information, engage in transactions, receive individually tailored responses to their requests, generate their own information, and

³⁸ Tr. 143 (Boyer testimony); 142 (stipulation by counsel for AT&T); Response to NECTA-3.

³⁹ Nat'l Cable and Telecommunications Ass'n v. Brand X Internet Services, 125 S. Ct. 2688 (2005) ("Brand X").

⁴⁰ Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities, 17 FCC Rcd. 4798, Declaratory Ruling and Notice of Proposed Rulemaking (rel. March 15, 2002) ("Cable Modem Order").

⁴¹ Cable Modem Order at ¶ 67.

exchange e-mail.”⁴² An Internet user has the ability to both download content to the computer terminal and upload content to others, without having a provider define and limit the universe of content to be transmitted. This contrasts with AT&T’s one-to-many video distribution model, linked with subscriber interaction.⁴³ AT&T’s video service is not being delivered over the Internet, and provides access only to the programs that reside on AT&T’s video servers, not the varied content of the Internet.⁴⁴

c. Legislative History Contradicts AT&T’s Arguments.

As discussed in the NECTA Brief and omitted from the AT&T Brief, the insertion of the phrase “or use” in the federal definition of “cable service” undercuts AT&T’s claim that Congress did not intend its form of two-way interactivity to be covered by cable television laws.⁴⁵ In addition, the definition of “cable service” principally focuses on whether the provider offers “video programming” over facilities that cross public rights-of-way, rather than splitting hairs over one-way or two-way. The two-way distinction was inserted into the federal statute to prevent cable companies from offering telecommunications services under their cable franchises, not to provide an easy escape route out of cable regulation.⁴⁶ Accordingly, Connecticut cable operators have obtained certificates of public convenience and necessity (“CPCNs”) before providing telephone

⁴² Cable Modem Order at ¶ 67.

⁴³ See NECTA Brief at 9; Krauss Reply PFT at 2, 6, 10, 11, 16, and 21. AT&T’s argument at p. 8 that “Content always travels in one direction – from the content provider to the customer,” lacks support in case law or logic. Content flows two ways over the Internet (downloading and uploading) and in telephone conversations. See Krauss Reply PFT at 10, 21. Content flows only one way (provider to subscriber) over cable systems, such as those of AT&T.

⁴⁴ Krauss Reply PFT at 16.

⁴⁵ NECTA Brief at 10-11; see 47 U.S.C. § 522(6)(B).

⁴⁶ See H. Rep. No. 934, 98th Cong. 2d Sess. 19 (1984) at 4464-66.

service.⁴⁷ Likewise, AT&T should be required to obtain a CPCN to provide video services in Connecticut.⁴⁸

The same is true under state statutes, where the definition of “cable service” in General Statutes 16-1(a)(15) was intended to “limit non-cable activities of the cable companies in line with the [SNET introduced] telephone bill. . . .”⁴⁹ SNET worked vigorously to ensure that cable companies could not get into the telephone business in 1985, just as it did in 1963 when the first Connecticut cable laws were enacted.⁵⁰

**d. AT&T’s Statutory Arguments Claiming to Avoid
“Absurd Results” are Themselves “Absurd.”**

AT&T argues that its interpretation of “cable service” is supported by canons of statutory construction that preclude decisions that produce “absurd results.”⁵¹ There is nothing “absurd” about the well-supported arguments advanced by the non-AT&T parties. Questions of statutory interpretation involve a “reasoned search” for legislative

⁴⁷ See, e.g., Decision, Docket No. 03-12-02, Application of Charter Fiberlink CT-CCO, LLC for a Certificate of Public Convenience and Necessity (June 16, 2004); Decision, Docket No. 97-03-26, Application of Cox Connecticut Telecom, LLC for a Certificate of Public Convenience and Necessity (July 9, 1997); Decision, Docket No. 97-08-11, Application of Comcast Telephony Communications of Connecticut, Inc. for a Certificate of Public Convenience and Necessity (Oct. 22, 1997).

⁴⁸ AT&T can obtain a statewide franchise in Connecticut, unlike many other jurisdictions. In fact, AT&T’s predecessor, SBC Connecticut (formerly known as SNET) did obtain, and later relinquished, a statewide cable franchise. See Decision, Docket No. 96-01-24, Application of SNET Personal Vision, Inc. for a Certificate of Public Convenience and Necessity to Provide Community Antenna Television Service (Sept. 25, 1996); Decision, Docket No. 00-08-14, Application of Southern New England Telecommunications Corporation and SNET Personal Vision, Inc. to Relinquish SNET Personal Vision, Inc.’s Certificate of Public Convenience and Necessity (March 14, 2001).

⁴⁹ HB 7748, An Act Concerning the Regulation of Community Antenna Television Companies, Report of the Committee on Energy and Public Utilities at 303 (comments of Rep. Anderson).

⁵⁰ It is ironic that an entrenched ILEC, which holds the vast majority of telephone customers in Connecticut, complains that cable operators have too much market power. Cable operators face more competition in the video arena than AT&T faces in the telecommunications arena. Satellite providers and wireline overbuilders continue to take market share away and are strong and viable competitors. See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket 05-255, Statement of Commissioner Jonathan S. Adelstein (Feb. 10, 2006).

⁵¹ AT&T Brief at 12, 30-31.

intent, looking at the words of the statute, the legislative history and the circumstances surrounding its enactment, the legislative policy and applicable common law principles.⁵² It would hardly be deemed reasonable and rational for this Department to provide free rein to the world's largest telecommunications company to cherry pick video customers in Connecticut with no assurances concerning customer service, applicable taxes, local programming, community access support or Department oversight. AT&T is not a "... hapless new entrant. . . in need of regulatory protection."⁵³ AT&T has revenues that dwarf the largest cable company, with a ubiquitous network, established customer relationships with virtually every Connecticut resident, and a vast infrastructure of engineers, lawyers and lobbyists,⁵⁴ and it is far from "absurd" to regulate it.

B. AT&T's Entry into Video Market without a Franchise Would Harm the Public Interest.

AT&T has failed to show that its entry without franchise requirements would serve the public interest.⁵⁵ The record reflects no commitments made by AT&T in this

⁵² Cox Cable Advisory Council v. Dept. of Public Utility Control, 259 Conn. 56, 63 cert. denied 2002 U.S. LEXIS 5569 (2002) (citations omitted).

⁵³ Charter Brief, Attachment A at 3.

⁵⁴ Id. On March 5, 2006, AT&T announced it was spending \$67 billion, plus more than \$21 billion in debt, to acquire the third largest ILEC, BellSouth.

⁵⁵ The "legacy" cable regulation to which AT&T disparagingly refers has a long history in Connecticut, any fair examination of which demonstrates that SNET influenced to ensure that cable was regulated and taxed like a traditional utility from the outset. Cable companies were treated to the full panoply of "legacy" utility regulation, including rate regulation, before they even had a single customer.

Docket other than agreeing to a limited set of MPVD obligations.⁵⁶ AT&T's failure to make any additional public interest or consumer protection commitments in a Docket captioned "Investigation of other terms and conditions under which video products may be offered" by ILECs (emphasis added), should raise red flags for the Department.

The AT&T Brief also ignores cream-skimming charges.⁵⁷ These concerns raised by all other parties cite AT&T's plans to serve as few "low value" and "medium value" customers as possible, while serving virtually all "high value" customers.⁵⁸ Unlike the deployment of SNET Personal Vision facilities based on installation of its "I-SNET" network,⁵⁹ AT&T's focus on "high value" customers in roll out plans clearly constitutes economic cream-skimming and red-lining. Exempting AT&T from cable regulation would overturn the unequivocal statement that "[t]he Department's historic support of universal service and the concomitant opposition to cream-skimming has not changed."⁶⁰

⁵⁶ See LFE-7; see also Tr. 258-60 (Boyer acknowledging that AT&T will not be required to meet cable obligations but stating that there are "certain things ... AT&T is willing to do as a public policy good." Mr. Boyer did not name any of these "certain things" in his testimony to the Department). This contrasts starkly with Mr. Boyer's PowerPoint presentation to a Missouri audience in which AT&T assured local authorities that deregulation did not mean no regulation. See LFE-10.

⁵⁷ See NECTA Brief at 18-19; Cablevision Brief at 13, 15-19; OCC Brief at 14-17; AG Brief at 5; see also 47 U.S.C. § 541(a)(3) and § 541(a)(4)(A); Conn. Gen. Stat. § 16-333b; R.C.S.A. § 16-333-13; Decision, Docket No. 96-01-24, (Sept. 25, 1996) at 68-89; Decision, Docket No. 02-02-18, Application of Groton Utilities d/b/a Thames Valley Communications for a Certificate of Public Convenience and Necessity to Provide Community Antenna Television Service to Groton, Ledyard, Stonington, North Stonington and Voluntown (Oct. 22, 2003). The record in this Docket and LFE-7 confirms that AT&T does not intend to comply with any law concerning redlining or non-discriminatory terms of service.

⁵⁸ See "Project Lightspeed: SBC Investor Update," November 11, 2004 (at http://media.corporate-ir.net/media_files/irol/11/113088/111104_color.pdf) (attached as Exhibit A to NECTA's Initial Comments). Nevertheless, AT&T has refused to explain what those terms will mean as a practical matter. See Response to NECTA-10 (objecting to NECTA Interrogatory seeking an explanation of the terms). By contrast, Connecticut cable operations like Charter have been compelled by the Department to serve very low density areas. Charter Initial Comments at 3-5.

⁵⁹ Decision, Docket No. 96-01-24 at 73.

⁶⁰ Id. at 71.

Finally, AT&T's idea of wireline video competition is to create an unlevel playing field, while leaving customers vulnerable. The Department cannot condone competition at any cost. The Department should disregard AT&T's arguments that regulation will hinder competition. Video competition is robust and will intensify when AT&T applies for a lawful cable franchise. As FCC Commissioner Adelstein recently observed, "competition in video distribution and programming markets is intensifying. From 2001 to 2005, the number of cable subscribers, as a share of total MVPD subscribers, has decreased from 77 percent to 69 percent. Commensurately, DBS subscribership has increased from 18 percent to 27 percent."⁶¹ Competition will only increase with the entry of Verizon, Thames Valley and AT&T into Connecticut as franchised cable operators.

III. CONCLUSION

If the Department believes that the current scheme of cable franchising is no longer appropriate, the State of Connecticut should work through its congressional representatives to propose uniform changes that will apply to all providers of video services using the public streets and highways.⁶² So long as cable systems are subject to franchising and related obligations, such as those overseen by this Department under Title 16 of the Connecticut General Statutes, the Department's regulations and extant franchise agreements, that regulatory scheme must apply to any ILEC seeking to offer

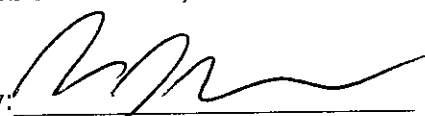
⁶¹ In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket 05-255, Statement of Commissioner Jonathan S. Adelstein (Feb. 10, 2006).

⁶² See Charter Brief, Attachment A at 12.

video services.⁶³ Granting AT&T a unique exemption from the requirements under federal, as well as Connecticut, cable television laws would benefit only AT&T - not the public interest - and is contrary to the language and express purpose of General Statutes § 16-11, under which this investigation was initiated.

Respectfully submitted,

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⁶³ See Cox Initial Comments at 2.