

**SB 447: RAISING PHONE RATES
AND PUTTING TELEPHONE SERVICE
AT RISK FOR CONNECTICUT CONSUMERS**



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A Dēmos Report

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1. INTRODUCTION: SB 447 WILL PUT TELEPHONE SERVICE AT RISK FOR CONNECTICUT, DECREASE TRANSPARENCY AND INEVITABLY INCREASE THE TELEPHONE BILL OF TENS OF THOUSANDS OF RATEPAYERS

SB 447 is a part of a wave of phone deregulation bills introduced around the country in recent years, all modeled on principles and provisions promoted by the corporate-backed American Legislative Exchange Council (ALEC). Like those bills in other states, SB 447 would increase the profits of telecommunications companies while putting at risk quality telephone service for ratepayers in Connecticut.

In fact, the bill as written is a gift bag of provisions benefiting telecommunications companies, particularly AT&T, without a single provision promising any benefit to the public in exchange. The end result of implementation would be that ratepayers could literally lose phone service with no more than a month's notice, there would be less transparency for consumers comparing phone rates, phone companies would no longer be audited, consumer protection of Internet telephone service (VOIP) would be preemptively foreclosed, and cell phone towers could be placed in public parks and watersheds with little accountability to the public.

While previous rounds of deregulation in Connecticut have already left the state with higher phone rates, the results of more deregulation will inevitably be even higher phone rates. The evidence for this outcome comes from states around the country that have passed similar phone deregulation measures. Seventeen of twenty such states have seen increased phone rates afterwards, with some states seeing as much as a doubling of basic phone rates. California, for example, saw a 50% increase in rates over just two years due to deregulation in that state.

The proposed SB 447 will not promote competition. Like many forms of rushed deregulation, SB 447 will just end up raising phone rates for consumers, undermining effective consumer protections, and disabling the ability of state regulators to promote the long-term investments by regulated companies most likely to give Connecticut consumers competitive options over the longer-term.

2. SB 447 DESTROYS CONSUMER PROTECTIONS AND CORPORATE TRANSPARENCY IN THE TELECOMMUNICATIONS INDUSTRY

SB 447 is a lobbyist wish-list of provisions that will eliminate nearly every consumer protection for ratepayers and nearly every element of corporate transparency by AT&T operating in Connecticut.

The state already has relatively weak protections for consumers compared to many other states, yet this bill would eliminate almost all the basic protections remaining for telephone ratepayers, giving the state a system of deregulation that has only led to further rate hikes in state after state across the nation.

SB 447 WOULD THREATEN UNIVERSAL SERVICE BY ALLOWING TELEPHONE COMPANIES TO ABANDON SERVICES EVEN WHERE THAT UNDERMINES COMPETITION

The single most important provision of SB 447 is Section 5 of the bill, which would allow any large telephone company to terminate any service it chooses for any reason to any customer with no more than a month's notice.

Under current law, large telephone companies can only stop providing a telecommunications service when they can prove there is full competition for the service and they must specify to the Connecticut Public Utilities Regulatory Authority (PURA) how many customers will be affected by the termination of that service. The PURA currently uses the information provided by the telephone company to determine whether withdrawal of the service will impact the overall availability of the service in the market, including the rates likely charged consumers by any remaining providers in the absence of its provision by current providers. As importantly, current law requires a clear method to allow consumers to easily choose a new provider for the service.

SB 447 eliminates any PURA evaluation of such a withdrawal of service, even if, for example, AT&T withdrawing from provision of the service will leave consumers with only one alternative—and potentially a poor alternative that fails to meet their needs. Customers left in a lurch with as little as one month's notice will no longer get any help in finding an alternative service. The irony is that this provision will allow the creation of new monopolies – or worse no service at all -- if companies withdraw from competing for unprofitable customers without any new regulatory review to protect competition in the future.

As Pulitzer Prize winning journalist David Cay Johnston wrote recently¹ of similar bills being introduced in states around the country:

The new rules AT&T and Verizon drafted would enhance profits by letting them serve only the customers they want. Their focus...is on well-populated areas where people can afford profitable packages that combine telephone, internet and cable television....Unless the new rules are written very carefully, millions of people, urban and rural, will lose basic telephone service or be forced to pay much more for calls.

SB 447 WILL UNDERMINE TRANSPARENCY

Under Section 1 of the bill, telephone companies will no longer be required to file rate changes with PURA. This will eliminate an ongoing public source for comparison shopping of telephone rates, instead being replaced by company-produced customer guides that are unlikely to contain the same level of detail and will not be public. Not only will this make comparison-shopping harder for existing customers, it will eliminate a year-to-year record of rate changes and undermine the ability of policy makers to easily evaluate in the future the effects of deregulation on ratepayers – no doubt one of the purposes of including this provision in the bill. If anything, in order to promote competition, the state should be collecting and publishing rate information from more players in the telecom sector to assist consumers in making informed choices between the options they do have.

Section 3 of the bill will also eliminate transparency in accounting by ending yearly local audits that help local residents know how their money is being spent. Instead of having an accounting for company's operations specifically in Connecticut, under the proposed bill, the only information policymakers will have are national audits without any state specific information. For example, the yearly audit revealed that local operations of AT&T's subsidiary, Southern New England Telephone, was charged \$48 million by the parent AT&T company to use the AT&T logo on ratepayers bills, a practice condemned by local advocates² that would be invisible without the yearly state audit.

DEREGULATION WILL NOT EXPAND HIGHER-END SERVICES

While advocates for more deregulation argue it will expand investments in new technologies, the reality is that Connecticut already ranks as one of the top states in promoting high-speed broadband Internet access for its residents, according to the National Broadband Map³, which is based on data collected by the National Telecommunications and Information Administration (NTIA) in association with the Federal Communications Commission (FCC). Connecticut ranks as one of the top three states with the percentage of the population with residential access to broadband download speeds greater than 3 Mbps.⁴ Given this reality, there is nothing being promised by advocates of SB 447 that will likely improve the lives of Connecticut consumers and much that will put what they have at risk.

3. PREEMPTIVELY DEREGULATING VOIP WILL LEAVE CONSUMERS VULNERABLE IN A CHANGING MARKETPLACE

Reflecting the overweening deregulatory impulse of the bill, SB 447 preemptively prevents PURA from establishing even the most basic consumer protections for users of Voice over Internet Protocol (VoIP) services in Connecticut. VoIP is a service provided by some telephone and cable companies that converts voice calls into “packets” sent over the Internet as an alternative to using the traditional switched phone lines of telephone companies.

While the state has generally not regulated VoIP, SB 447 will mean that where problems arise, consumers will have no option to seek regulatory protection and there will be no option to guarantee access for consumers in remote and rural areas.

With more people transitioning to VoIP phone service, which currently does not contribute to support “lifeline” phone service, the fund that supports affordable “lifeline” phone options for low-income consumers will not be sustainable. While SB 447 does not necessarily bar the state from assessing fees from the VoIP industry, it will create regulatory restrictions on creating an integrated solution for funding “lifeline” services across the traditional and VoIP phone industries.

Essentially, what has been a light regulatory hand on the VoIP industry will be converted into a permanent exemption from any public accountability for the VoIP industry, however egregious may be future failures of consumer service.

WHY IS VOIP DEREGULATION BEING PROPOSED NOW?

With little regulation up to this point, the obvious question is why the sudden push by the industry to preemptively bar regulation in the future?

Part of the answer is that the Federal Communications Commission (FCC) has been reassessing the status of the VoIP industry and reclassifying it in ways that may open it up to greater regulation at the federal and state level. The FCC did discourage regulation of VoIP in the early part of last decade, as part of a broader trend of the Bush Administration shutting down state regulatory authority across a wide range of areas, from telecommunications to environmental regulations.

However, the FCC has itself noted that with the rise in VoIP telephone service, regulators at both the federal and state level need to reevaluate the contribution of VoIP to lifeline and universal service funds.⁵ In February of this year, the FCC enacted new regulations requiring what it designates as interconnected VoIP service providers – ie. fixed VoIP providers like cable and telephone companies – to report all network outages in the same way landline phone providers currently do.

“We are helping ensure that consumers will have access to reliable phone service, particularly when calling 911, whether they are using a traditional telephone or one that operates by interconnected VoIP service,” FCC Chairman Julius Genachowski said in a statement. “Public safety is a core mission for the agency.”⁶

This ruling highlights that as VoIP has become a growing part of the telecommunications infrastructure, the same concerns of network stability and quality that have driven regulation of the traditional telephone system are increasingly needed for the VoIP sector.

SB 447 IGNORES THESE TRENDS NECESSITATING MORE, NOT LESS OVERSIGHT OF THE VOIP INDUSTRY

This proposed bill is an attempt to short-circuit that reevaluation in Connecticut and permanently preempt the public debate. The hope is to quietly hamstring state regulatory authorities just as people are demanding greater oversight of the industry.

While a number of states have approved similar provisions under industry lobbying pressure, other responsive state leaders have rejected such across-the-board deregulation as inappropriate. Notably, a similar proposal to block all future regulation of VoIP was rejected in New York just a few weeks ago. And Colorado Governor Bill Ritter eloquently outlined why such preemptive deregulation was “unwise” in a veto message of similar legislation in 2010⁷:

[I]t is important to permit the FCC the time to make its decisions concerning VoIP. Further, acting without any standards will result in a disparate patchwork of different laws across the country regulating the service, resulting in confusion for both the industry and its consumers. As a result, it is premature for Colorado to enact the blanket exemption for VoIP.

Ritter also noted that the growth of VoIP demanded increased regulation to protect consumers:

Colorado is headed for a future where VoIP may be the predominant form of basic telephone service. As this progression from landlines to VoIP occurs, Colorado cannot be left without the power to regulate such an important technology. Should the need arise, regardless of movement at the federal level, the PUC must have the latitude and authority to regulate the price, quality of service, and availability of VoIP in order to prevent significant harm to the consumers of this State...

For the same reasons Gov. Ritter highlighted, it would make little sense for Connecticut to make a sudden radical move to deregulate the VoIP industry in a time when other states and the federal government are moving in the opposite direction.

HOW OTHER STATES ARE PROTECTING CONSUMERS THROUGH VOIP REGULATION

Recognizing the importance of protecting consumers and integrating interconnected VoIP providers into their state universal service funds, some states continued to maintain VoIP regulations to protect consumers during the Bush administration and others have taken action in recent years as the FCC has signaled that there would be greater leeway for regulation of the VoIP industry.

A series of recent state public utility commission decisions, from Kansas⁸ to Vermont⁹, have made clear how wide the consensus is among such regulatory institutions that VoIP providers should be treated more like traditional telephone service.

These rulings are on a top of a range of states that have continued to apply various state regulations to VoIP throughout the last decade. In particular, VoIP providers have been assessed fees to support both 911 systems and universal service programs in states including Alabama, Arkansas, Colorado, Louisiana, Montana and South Carolina. While not assessing specific fees, Georgia, Missouri and Wisconsin maintain some degree of clear regulatory oversight over VoIP in those states.¹⁰

4. FAILURE OF PHONE DEREGULATION NATIONALLY

Evidence has piled up that local phone deregulation, where implemented around the country, has not delivered promised benefits and instead has led almost universally to higher phone rates and lower quality service for consumers.

PHONE RATES HAVE INCREASED SIGNIFICANTLY IN MOST STATES AFTER DEREGULATION

The December 2009 survey of states by the National Association of State Utility Consumer Advocates found that out of 20 states surveyed with deregulation in place, 17 of those states had seen rate increases. And the reported increases ranged from eight percent per year to one hundred percent increases in rates. In fact, the only decreases in phone rates for basic services were in three states where basic phone services are still fully regulated.¹¹

Examples of this pattern in other states include Ohio, whose law restricted rate increases to \$1.25 per month per year, which has seen that maximum increase in each of the years since the law was passed,¹² while Illinois, following a deregulation law passed in 2010, saw AT&T increasing line charges by up to 63 percent.¹³

THE CALIFORNIA RESULTS OF DEREGULATION

California deregulated phone rates starting in 2006 and two reports, one by the California State Senate Rules Committee and another by the independent organization The Utility Reform Network (TURN), provide the most comprehensive review of the effects of deregulation in any state.

The California State Senate report found:

“At the oversight office’s request, the PUC gathered information on landline rate changes levied since deregulation by AT&T, Verizon, Frontier and SureWest. The data show that no rates dropped and *some increased by several hundred percent. (italics added)* Moreover, these increases were implemented on limited notice and with no immediate opportunity for protest or comment by the public.”¹⁴

Overall, the California Senate found that AT&T’s basic residential rate climbed 50 percent between 2008 and 2010.¹⁵

Individual services saw even more dramatic increases. For example, the Senate found AT&T raised the rate for having an unlisted number by 614 percent in the first year of deregulation – from 14 cents a month to \$1 a month. SureWest raised its unlisted rate 563 percent, from 30 cents monthly to \$1.99.¹⁶ The Utility Reform Network (TURN) highlighted increased California rates across a wide range of

services in their 2010 report, *Why “Competition” is Failing to Protect Consumers: The Limits of Choice in California’s Residential Telecommunications Market*.¹⁷

When California Policymakers Examined the Results of Four Years of Landline Deregulation in that State, They Found that There Still Was Little Real

Competition. The report by the California Senate Rules Committee found that California’s two largest phone companies -- AT&T and Verizon -- together control 85 percent of the state’s residential landline phones. “All the evidence points to the existence of market dominance by AT&T and Verizon, which allows them to raise prices without losing market shares.”¹⁸

Even where two viable competitors exist, many analysts don’t find that competition delivers effective price competition to protect consumers. Such “duopoly” markets lead to what analysts at The Utility Reform Network identified as “price leadership”, where:

[A]lternative providers simply follow the price actions of the dominant telephone companies. Observed pricing reflects the actions of firms that recognize that consumers have little choice, and the result has been dramatic rate increases for many consumers.”¹⁹

With just a few choices in most markets, such limited competition in these markets end up prone to price matching and collusion rather than real price competition. In California, The Utility Reform Network in its 2010 report found that neither wireless, nor competitive local exchange carriers, nor VoIP technologies “offer the overwhelming majority of consumers a reasonable means to substitute for the local telephone services...There are numerous reasons to believe that because of these limitations on choice, market forces are not sufficient to protect consumers from market power.”²⁰

Similarly, VoIP services provided over broadband services are not always a cost-effective alternative for consumers dependent on landline services. Since VoIP services require electricity, they do not guarantee service during power outages that the legacy phone services do. While some cable VoIP services do provide battery backup, they often have limitations.²¹ Many services such as TIVO and other services requiring dial-up services do not work with VoIP, including alarm monitoring services and home health care monitoring systems.

LOSS OF CONSUMER PROTECTIONS

One critical loss from phone deregulation in other states has been not just higher rates but the loss of an effective regulator who can enforce consumer rights. As the California Senate Rules Committee outlined in their report on California deregulation: “Once telephone companies are detariffed, the Consumer Affairs Branch has problems getting them to resolve differences.”²²

Regulatory agencies provide an essential protection for consumers, since legal rights that can only be enforced through court proceedings are largely empty for working- and middle-class consumers suffering violations that cannot be prevented in a cost-effective way through the courts. Because regulatory agencies can act to sanction companies for violations of consumer rights on a more comprehensive level than litigation, they end up being a far more effective tool for consumer protection.

5. ALEC AND THE NATIONAL INDUSTRY-BACKED ATTACK ON PHONE REGULATION

The industry backing of SB 447 in Connecticut is just part of a broader national campaign by industry and allied conservative organizations to roll back state citizens' ability to set standards for companies doing business in their state. The Center on Media and Democracy in its *ALEC Exposed* project recently exposed secret files revealing the tight network of corporations drafting pro-corporate laws to disseminate through the American Legislative Exchange Council (ALEC), an organization supposedly of state legislators that in fact is dominated by corporate funders at both national and state levels.

And telecom interests have been some of the central players in ALEC. For example, AT&T representatives not only serves on the top-level national governing "Private Enterprise Board," including having chaired the organization in the past, its representatives are corporate co-chairs of ALEC's state organizations in multiple states, including in Connecticut, where ALEC's co-chair is John Emra, Executive Director of External Affairs for AT&T's Connecticut operations.²³ Notably, John Emra has been the chief proponent and lobbyist for SB 447 in Connecticut. AT&T contributes hundreds of thousands of dollars to ALEC each year, just part of the over \$15 million the company spent on lobbying in 2010 alone.²⁴

Part of ALEC's operations has been promoting a large number of model telecom deregulation bills²⁵, all with the thrust of, in the words of ALEC, promoting a "hands-off approach" to telecom regulation.²⁶ Versions of these deregulation bills have been promoted across the nation, especially in the states led by deregulation champions like Governor Scott Walker of Wisconsin, who, as *ALEC Exposed* details, made signing a law remarkably similar to SB 447 a top priority:

On May 23, 2011, Governor Walker signed into law one of the first bills he requested, a radical deregulation of the telecommunications industry in Wisconsin. Under the bill, the Wisconsin Public Service Commission (PSC) could no longer set telecommunication rates to keep prices low for consumers, perform audits of providers, or investigate consumer complaints.

It guts the PSC's authority to regulate rates of basic phone service in areas with little or no competition."...The bill tracks ALEC's "Regulatory Modernization Act" which prohibits any commission from regulating rates and charges, terms and conditions of services, mergers or acquisitions and more.

ALEC is just part of a broader network of conservative, industry-backed organizations pushing this deregulation agenda. For example, testifying at the

March 20, 2012 hearing on SB 447 was Discovery Institute Senior Fellow Hance Haney²⁷, who previously worked at places like the United States Telecom Association and Qwest Communications.²⁸ The Discovery Institute is a well known part of the conservative network of organizations (See the Discovery Institute's Center for Science and Culture website at <http://www.intelligentdesign.org/> for more). In fact, one of the major funders of the Discovery Institute is Philip Anschutz, a conservative activist who made a large part of his fortune in the telecommunications industry as a co-founder of Qwest Communications, and has been a major funder of conservative economic and social causes like working to roll back gay rights.²⁹

In the case of promoting legislation to block VoIP regulation, the initial intellectual barrage on the issue was launched in a 2008³⁰ by The Federalist Society, the premiere conservative legal association that has promoted conservative judges and policies across the nation. When Maine's PUC ruled in 2010 for including VoIP within its regulatory jurisdiction, John Stephenson, director of the Telecommunications and Information Technology Task Force at the American Legislative Exchange Council, posted an article at the Heartland Institute, an industry-funded think tank that promotes state policies, calling for its legislative reversal.³¹

All of these groups have coordinated the propaganda effort to convince the public and legislators that a self-interested deregulatory agenda was actually for the benefit of the public, rather than just a way to increase profits for the shareholders of those telecom firms.

6. CONCLUSION: SB 447'S RUSH TO DEREGULATE IS BASED ON TOO LITTLE EVIDENCE AND IGNORES THE POOR TRACK RECORD OF DEREGULATION IN OTHER STATES AND INDUSTRIES

Given the massive, job-destroying recession we are all experiencing due partially to a rush to deregulate banking institutions, legislators should be extremely reluctant to push any form of market competition policy without maintaining a strong backstop of regulatory oversight. As the recent Congressional Financial Crisis Inquiry Commission found:

More than 30 years of deregulation and reliance on self-regulation by financial institutions...actively pushed by the powerful financial industry at every turn, had stripped away key safeguards, which could have helped avoid catastrophe.³²

The failure of energy deregulation for consumers just highlights the pervasive lie that deregulation has delivered better choices and prices for consumers. After states across the country had implemented retail electricity deregulation, a comprehensive survey by *USA Today* found that prices had almost universally increased for consumers, including in Connecticut. In fact, Connecticut was in the group of states where consumers had seen the highest increases in rates following electricity deregulation, with Connecticut consumers suffering an eye-popping 53.2% increase in rates between 2002 and 2006.³³ Similarly, an in-depth New Jersey Citizen Action report in 2008 found similar problems with rushed electricity deregulation in that state. "Premature deregulation of New Jersey's energy markets failed to create competition in NJ's retail residential electricity and gas markets and has led to skyrocketing rate increases year-after-year for residential consumers."³⁴

REGULATION IS NEEDED FOR EFFECTIVE COMPETITION AND CONSUMER PROTECTION



As Dēmos outlined in a recent report, *Good Rules: Ten Stories Of Successful Regulation*, good regulation does more than prevent disasters; it creates a framework for long-term economic growth and investments:

[G]ood rules also help create stable markets in which the energy and imagination of the business world are directed toward products and services of lasting value... Thus, the financial reforms of the New Deal era did not just end the avalanche of bank failures that had greeted President Franklin Roosevelt on his arrival in office. They brought an end to the era when many Americans thought it was safer to keep their money under the mattress.

From the 1930s until the aggressive deregulation of the 1980s and '90s, the banking and securities industries grew and prospered, unspectacularly but sustainably.³⁵

Regulation of local telephone service is needed not just to protect those still dependent on those services, but to keep telecom companies focused on long-term investments for the future as we make the transition to a broadband-based economy.

Ultimately, the impulse behind SB 447 is based on the false premise that there is sufficient competition in local phone service to create a competitive model that can substitute for existing regulatory protection of consumer rights. The reality is that there is little real competition for landline phone service and neither wireless phones nor VoIP services are a real competitive alternative for most families that currently depend on landline phone services.

The rush to deregulate without clear evidence that there is effective competition for landline phone services follows too closely the unfortunate pattern of deregulation in banking, electricity and other fields where competition policies were rushed into existence and backstop regulatory policies were not maintained to protect consumers.

CONCLUSION

Landline local phone deregulation has failed across the country—delivering higher costs to consumers and worse service. States that have implemented local landline deregulation have seen large increases in phone rates, often in the double-digits and for some services, prices have more than doubled following deregulation. And without regulatory enforcement, consumers have found that they have little recourse in enforcing their rights.

There are still too few local phone service competitors for competition by itself to prevent price manipulation and gouging by oligopolistic companies that dominate local phone markets. Good regulation in fact is needed to encourage useful competition and protect consumers from predatory behavior by companies.

Ultimately, SB 447 is a bad deal for Connecticut that will just replicate failed phone deregulation experiments around the country.

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