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CABLE TELEVISION UPDATE

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CABLE TELEVISION LAW AND REGULATION 2006 CONNECTICUT REPORT

INTRODUCTION

In this report, the Connecticut cable industry looks ahead, but also is compelled to reexamine the past in responding to legal and regulatory developments. In our 2004 and 2005 Connecticut Reports, we described both the ongoing efforts of AT&T (formerly SNET and SBC) (hereinafter "SNET") to persuade regulators and legislators to allow unfettered entry into the video delivery business and the historical context by which "legacy" cable regulation has been shaped by the dominant Connecticut telephone company. Notwithstanding the full court press of SNET, only three of the five commissioners of the Department of Public Utility Control ("DPUC") ruled in favor of the novel argument that SNET's mode of transmission of video programming was not "cable service" that required a franchise. The DPUC's decision was appealed by the Office of Consumer Counsel ("OCC"), the New England Cable & Telecommunications Association, Inc. ("NECTA"), the three Cablevision franchisees, Charter Communications and Cox Communications. Further, the OCC and NECTA jointly filed a declaratory judgment action now pending in the United States District Court for the District of Connecticut, as did Cablevision, with both federal cases consolidated and dispositive motions fully briefed by the OCC, NECTA, Cablevision, the DPUC and SNET. The Attorney General has also moved to intervene in the federal action in opposition to the DPUC ruling.

2006 also saw Comcast acquire control of the four franchises owned by Adelphia, two of which had been previously managed by Tele-Media Company; the last independent cable operator, Eastern Connecticut Cable Television, being transferred to MetroCast Communications of Connecticut, an affiliate of Harron Communications; and the DPUC pressing forward with the renewal of Cablevision's two largest franchises.

In this Connecticut Report, we review the somewhat convoluted background behind the current differences in taxation of cable systems and services from telecommunications networks and services; provide a summary of the non-SNET regulatory proceedings at the DPUC; summarize the current state of theft of service litigation; and offer a special feature – a guest column authorized by Cox's Director of Regulatory Affairs for New England on the state of telecommunications competition.

CONNECTICUT'S TAXING SITUATION FOR THE CABLE INDUSTRY

During last year's investigation by the DPUC into the video delivery plans of SNET and Verizon, and during related legislative efforts that are continuing into the upcoming 2007 session, SNET contended that the tax structure in this State favors the cable industry and that it should be entitled to millions of dollars in tax relief. The facts demonstrate otherwise, as this article summarizing nearly 20 years of SNET-led efforts to over-tax the cable industry seeks to illustrate.

Taxation and Regulation of Cable Television: The Utility Approach in the Formative Years

In 1965 the General Assembly established that cable systems would be regulated and taxed like the telephone company and other traditional public utilities through the enactment of "An Act Defining Community Antenna Television Systems As Public Service Companies." This legislation included authorization for the Public Utilities Commission (now, the DPUC) to regulate rates for CATV service

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as it would other regulated telephone, gas, electric and water utilities. In that same year, CATV companies were made subject to an annual tax on "gross earnings" at the same rate as the telephone company: 6%. As the legislative history from that period demonstrates, the General Assembly envisioned CATV companies as being granted state issued franchises that were ". . . practically identical with those granted to telephone and power companies. . . ." Inasmuch as the telephone and power companies were subject to the annual gross earnings tax, which was naturally factored into the regulated rates of those companies, so should be this nascent cable industry. Significantly, there were no CATV companies operating in 1965, as the first franchises were not awarded in Connecticut until 1967, with the first customer (i.e., "gross earnings" of a CATV company) not occurring until nearly five years later.

SNET's own tax agenda has dominated the way cable television has been taxed over the past forty years.

At about the same time as CATV companies began launching service in Connecticut, in a June 1971 Special Session, the General Assembly increased the rate of gross earnings tax to 8% on telephone and CATV, but not on traditional utilities. The gross earnings tax was "in lieu of all taxes . . . on tangible personal property used solely and exclusively in a business [subject to the gross earnings tax]."[1] Further, the purchase and sale of services such as CATV, telephone and other traditional utilities were specifically exempted from the sales and use tax.

Early Challenges to the Gross Earnings Tax on CATV Companies

Almost from the outset, the imposition of the gross earnings tax on CATV companies came under legal challenge – but not from the cable industry. When the initial franchises were issued in 1967 following three years of a total of 93 public hearings, Connecticut's broadcasters launched litigation challenging these awards. The initial franchises were upheld by the Connecticut Supreme Court.[2] In those formative years, cable operators needed to obtain from the FCC a certificate of compliance before commencing operations. Again the Connecticut broadcast industry challenged the initial franchises for non-compliance with FCC rules.[3] Among other broadcaster claims was that the then-8% gross earnings tax exceeded FCC rules, which permitted franchise fees to be set at no more than 3% of gross earnings, or up to no more than 5% with the FCC's express permission. The FCC denied the broadcasters' objections, finding that the 8% gross earnings tax "substantially complies" with the FCC rules without reaching the merits of the question whether the gross earnings tax constituted a "franchise fee" and, if so, exceeded the regulatory limitations.[4] The FCC later rejected a similar challenge to a Groton area compliance certificate application, ruling that the "net effect" of the Connecticut gross earnings tax did not violate the FCC rules, because ". . . payment of the 8% excuses payment of the personal property tax and lightens rather than increases the burdens that might otherwise be imposed."[5]

The Second Generation of Legal Challenges: The Cable Industry Steps Up

With the broadcasters' challenges exhausted, and CATV service finally being offered in many communities, the cable industry began to review several vehicles for tax planning. The launch of the HBO service in 1976 via satellite to cable systems presented a prime opportunity. Connecticut rate regulation did not impact the retailing of HBO as a "premium" or optional service, and, with the service unregulated, most Connecticut cable operators established affiliated companies to provide HBO and other future premium services. The cable companies would provide the systems and the cable customers, while the "premium service companies" would remit to the franchised cable companies only a percentage of the premium subscription fees, thereby sheltering most of the receipts from the gross earnings tax.

[1] Traditional utilities subject to the gross earnings tax in a lesser amount, (i.e., 3% to 5%) were subject to the personal property tax. Conn. Gen. Stat. § 12-80.

[2] Connecticut Television, Inc. v. PUC, 159 Conn. 317 (1970).

[3] As an historical note, those challenges to the applications were made by the licensees of Station WHNB (now WVIT), WTIC (now Fox 61), WTNH, and the Connecticut educational station (then WCBV).

[4] See Valley Cable Vision, Inc., 38 FCC 2d 959 (1972) *recons. denied* 40 FCC 2d 191 (1973).

[5] Coastal Cable TV Co., 47 FCC 2d 877 (1974).

The Connecticut Department of Revenue Services ("DRS") did not agree with the cable industry position, and deficiency assessments followed.

Most, but not all, Connecticut cable operators paid the assessments under protest and immediately filed protective appeals, alleging that the gross earnings tax was a franchise fee that exceeded the FCC rules and that the gross earnings tax violated each cable operator's first amendment rights. The cable industry's legal challenges were buoyed by two events. First, the gross earnings tax rate on cable and telephone jumped to 9% in 1981, reflecting the General Assembly's need to continue to find additional sources of tax revenue, in order to attempt to preserve Connecticut's reputation as a state with no personal income tax. Second, in 1983, the U.S. Supreme Court decided the first of several first amendment tax cases invalidating state statutes that had a discriminatory impact on certain taxpayers despite an absence of demonstrated intent to censor the taxpayers.[6] With protective state court appeals filed, the Connecticut cable industry pressed to have the FCC declare the 9% Connecticut gross earnings tax a franchise fee that exceeded the FCC 3-5% cap.

In July 1984, the industry petitioned the FCC for a ruling that the gross earnings tax conflicted with the FCC rule. However, the new 1984 Cable Act contained a provision that codified a 5% franchise fee limitation and a corresponding definition of the term "franchise fee" in 47 U.S.C. § 542, leading the FCC to dismiss the Connecticut petition as moot. Cable industry challenges to implementing FCC rules were dismissed in large part and the petitions for reconsideration of the earlier dismissal orders were challenged in consolidated cases, culminating in a court-ordered remand to the FCC of the pre-Cable Act challenges to the franchise fees.[7] With the Connecticut challenge to the gross earnings tax refiled with the FCC at the end of 1986 and opposed by DRS, the waiting game began. Almost two years later the FCC issued a news release declaring that "Dispute Concerning State of Connecticut Gross Earnings Tax on Cable Systems Resolved." The FCC release pronounced at the outset that ". . . the FCC has found that the State of Connecticut has imposed its gross earnings tax in a discriminatory manner." The devil being in the details, however, the FCC then set forth a methodology for evaluating the net effect of the personal property tax exemption, in conjunction with that portion of the gross earnings tax that appeared to be non-discriminatory, i.e., consistent with such taxes on other utilities. Forced by judicial order to decide the Connecticut gross earnings tax case, at least as it applied to its pre-Cable Act rules, the FCC found that the ultimate resolution ". . . requires an authoritative determination of state law, either in the state court refund proceeding or otherwise."[8] The FCC plainly punted.[9]

". . . the FCC has found that the State of Connecticut has imposed its gross earnings tax in a discriminatory manner."

Connecticut Changes Its Scheme of Taxation of Cable & Telephone Services

The year was 1989, and while the FCC was still dealing with the later stages of the Connecticut tax petition, the General Assembly changed the scheme yet again. The sales tax was increased from 7.5% to a record high rate of 8%; a state income tax was being seriously considered;[10] and SNET wanted out of the 9% gross earnings tax. SNET offered an astute proposal: In exchange for relief from the gross earnings tax, SNET would collect sales tax from its customers on the sale of telecommunication services

[6] Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575 (1983); Arkansas Writers' Project v. Ragland, 481 US. 221 (1987).

[7] See Yakima Valley Cablevision v. FCC, 794 F.2d 737 (D.C. Cir. 1986)

[8] Connecticut Cable Television Association, Inc., 4 FCC Rcd 476, FCC 99-395 (rel. Jan. 3, 1989).

[9] Upon a request for reconsideration, granted in part, the FCC refined its guideposts for determining the extent of discrimination of the gross earnings tax on CATV companies in a manner slightly more favorable to the petitioners, but nevertheless held fast to its ruling that the resolution – pronouncements to the press notwithstanding – needed to occur in state court tax appeals. Connecticut Cable Television Association, Inc. Petition for Reconsideration, FCC 90-239 (rel. July 3, 1990).

[10] The Connecticut personal income tax was not enacted until 1991.

in Connecticut and would become subject to a statewide (and administratively convenient) personal property tax under a statutory formula at a lesser tax rate than other utilities.[11] The cable industry's request for the same tax treatment afforded SNET during the 1989 session was rejected. In order to avoid potential federal preemption, however, the General Assembly reduced the gross earnings tax on all cable systems from 9% to 5% effective January 1, 1990, while subjecting cable service to the sales tax. In 1990, cable service was one of the most heavily taxed services in the State, with an effective tax rate on cable in excess of 13%, based on an 8% sales tax and a 5% gross earnings tax (which the State asserted was also subject to the sales tax).

Meanwhile, SNET's arguments that it has been over-taxed in comparison to cable are contrary to its positions taken over the past 20 years to opt out of tax regimes uniquely imposed on cable . . .

Thereafter, most Connecticut cable television companies entered into a series of settlement agreements with the DRS, ending almost 15 years of legal challenges to the scheme of taxation on cable companies. As an integral part of these settlements, most of the tax-specific issues between the cable industry and the State were resolved. In 1995, however, the General Assembly, facing pressure from cable access users, added a fourth fee on cable customers in the form of annual per subscriber fees to support public, educational and governmental access,[12] making the scheme of taxation once again in excess of the 5% maximum under federal law.

SNET Enters the Cable Business and Seeks More Favorable Tax Treatment

In 1996, SNET obtained an unprecedented statewide cable franchise from the DPUC, with cable service provided using SNET's upgraded network. With the assistance of DRS, the Connecticut Telecommunications Ad Hoc Committee was formed in late 1996 to address SNET concerns that it would not be able to benefit from the personal property tax exemption that was afforded cable systems that were subject to the gross earning tax.[13] SNET complained that it was unfair that the cable system plant was exempted from the personal property tax.

In 1997, with the full court press of SNET, the special statutory statewide scheme for taxation of personal property used in rendering telecommunications services was modified to allow for apportionment for personal property tax purposes for dual purpose networks, using a formula based on gross receipts.[14] Once again, SNET's legislative agenda for purposes of taxation was adopted by the General Assembly. Once SNET exited the cable business, the issue remained dormant – until now.

SNET'S Own Tax Agenda Has Dominated the Way Cable Television Has Been Taxed Over the Past Forty Years.

It is remarkable how Connecticut's dominant telephone company has directed the taxation of the cable industry over the past forty years. First, in 1965, SNET argued and the General Assembly agreed that CATV should be regulated comparably and taxed identically to the telephone company. In 1989, SNET's initiative to remove itself from the gross earnings tax in exchange for a statewide property tax formula at a lesser rate, with the removal of the exemption of the sales tax, left Connecticut cable operators and subscribers with an obligation to remit to the State a whopping 13 cents for each dollar of cable service sold. In 1997, SNET obtained a moderately favorable apportionment that would enable it to obtain some tax benefits from offering cable services, while subjecting cable companies seeking to enter the cable business to additional personal property taxes based on revenues from providing telecommunications services.

[11] The original codification of this requirement was in Conn. Gen. Stat. § 12-80a.

[12] See Conn. Gen. Stat. § 16-331a.

[13] As a major Connecticut cable company, TCI had launched local exchange telephony service in early 1997 in the Hartford system, including parts of its New Britain franchise area, soon to be followed by Cox in its Connecticut franchise areas.

[14] See Conn. Gen. Stat. § 12-80b.

In 2006, with an unprecedented ruling, albeit by a narrow 3-2 vote of the five DPUC commissioners, the DPUC has allowed SNET, now AT&T, to once again foray into the video delivery business, this time without any regulatory or tax requirements.[15] If SNET also is allowed to offer video without a corresponding 5% tax on gross earnings, the ghosts of Minneapolis Star, Arkansas Writers' Project and similar cases will be freed from the settlements with DRS that have kept them entombed for the past decade and could be reasserted by the settling cable parties. Meanwhile, SNET's arguments that it has been over-taxed in comparison to cable are contrary to its positions taken over the past 20 years to opt out of tax regimes uniquely imposed on cable, and should not be accepted without clear proof that SNET's property tax payments and payments on video services if taxed under the cable scheme would exceed cable's very substantial gross receipts, sales tax and PEG access support payments.

2006 CONNECTICUT LEGAL AND REGULATORY DEVELOPMENTS

Transfers of Control

Eastern/MetroCast. The last original Connecticut cable franchisee, Eastern Connecticut Cable Television, Inc., serving the greater New London franchise area, transferred its franchise to MetroCast Communications of Connecticut, Inc. on September 1, 2006. MetroCast, a subsidiary of Harron Communications, reflected the reunion of Joel Cohen, Harron's Chairman of the Board, and MetroCast's new Connecticut General Manager, John Dee, who previously worked together when Avalon Cable operated systems in Connecticut and Massachusetts.

Taking advantage of the Connecticut statutory scheme that allows the DPUC to extend the length of a franchise term, MetroCast proposed an aggressive upgrade/rebuild schedule to obtain a nine-year transferred franchise term, without the need for a formal renewal proceeding. From a legal perspective, the transfer docket presented an interesting issue inasmuch as the DPUC initially believed that the transaction required "holding company" approval under General Statutes § 16-47, rather than the usual transfer of franchise and assets under other statutes. While MetroCast supplemented its application with holding company application exhibits and some holding company-type questions were asked during discovery and at hearings, the DPUC's final Decision recognized that the original application was brought under the appropriate statutes and that holding company approval was not required.

Taking advantage of the Connecticut statutory scheme that allows the DPUC to extend the length of a franchise term, MetroCast proposed an aggressive upgrade/rebuild schedule to obtain a nine-year transferred franchise term, without the need for a formal renewal proceeding.

Adelphia/Comcast. On July 31, 2006, following receipt of federal approvals, control of the four franchises owned by Adelphia Communications, Inc. was transferred to Comcast – thereby bringing a total of 14 Connecticut franchises and approximately 49.5% of Connecticut subscribers under the Comcast umbrella. With respect to the other operators, as of the end of 2006, Cablevision held three franchises; Charter – two; Cox – three; MetroCast – one; and municipal overbuilder Groton/Thames Valley – one. Of course, the element of market control becomes less and less relevant for regulatory purposes with ILEC entry into the cable business, in addition to the vigorous competitive forces of DirecTV and The Dish Network – the former of which is also the beneficiary of SNET's Connecticut launch and aggressive marketing of its "Homezone" data/satellite video offering in mid-2006.

Franchise Renewals and Regulatory Compliance

Cablevision/Bridgeport and Fairfield County. Notwithstanding the extensive efforts of Cablevision to forestall the DPUC's proceedings on its pending renewal applications for its two largest franchise areas to allow for possible legislative developments at federal or state levels, the DPUC proceeded and conducted full franchise renewal proceedings for both the Bridgeport and Norwalk area franchises. Hearings were extensive and the record of both proceedings was replete with issues involving municipal and educational programming and management of community access, in addition to the typical Connecticut franchise

[15] See Decision, Docket No. 05-06-12, DPUC Investigation of the Terms and Conditions Under Which Video Products may be Offered by Connecticut's Local Exchange Carriers (June 7, 2006) (3-2 dec.), on appeal in Connecticut Superior Court and with related federal legal challenges in Docket Nos. 3:06-CV-D1106 (JBA) and 01107 (JBA).

renewal fare concerning financial support for municipal access, telephone response time and compliance with the myriad of "legacy" cable requirements that Connecticut cable operators must follow on a daily, monthly, quarterly or annual basis. The DPUC ultimately awarded 11-year franchise terms, although there was nearly a year remaining on the existing franchises.

Upcoming Changes to Cable Regulations. Franchise renewal and regulatory requirements in Connecticut are likely to be influenced by legislative initiatives that will occur at both the State and federal levels in the coming year and, potentially, by FCC orders seeking to identify and eliminate barriers to competitive franchising at the municipal level. Several of the legacy Connecticut regulatory requirements should be reviewed in light of SNET's and Verizon's aggressive video entry plans and, in particular, the DPUC's 3-2 Decision in Docket 05-06-12 that exempted SNET's video offerings (but not Verizon's) from all cable television requirements.

Several of the legacy Connecticut regulatory requirements should be reviewed in light of SNET's and Verizon's aggressive video entry plans . . .

Requirements that should bear particular review for continuing usefulness in a competitive video market include the statutory obligation that Connecticut cable companies be required to fund an independent consultant to perform a needs assessment; and the filing of data showing the level of compliance with General Statutes § 16-333k(3), which in pertinent part requires that each cable operator connect each call concerning subscriber inquiries, complaints, repair requests, requests for billing adjustments and other service-related requests ". . . to a company customer service representative within two minutes during normal business hours, unless there is an emergency . . . ." Both are highly burdensome requirements that were imposed when there were fewer customers, fewer services and less technological features than offered on modern cable systems and have been the focus of countless hours of DPUC franchise renewal proceedings, interrogatories, compliance filings and, at least in the case of Charter Communications, a show cause docket. By contrast, SNET will have no such requirements to follow, unless and until legislative initiatives or judicial decisions correct the DPUC's 3-2 decision in Docket No. 05-06-12.

A New DPUC? Governor Rell will have an opportunity to significantly reshape the DPUC as three Commissioners will see their terms expire on June 30, 2007: Vice Chairman Jack Goldberg, a Republican first appointed in 1995 and reappointed to a third four-year term in 2003, Commissioner Anne George, a Republican appointed on July 1, 2003, and Commissioner Anthony Palermino, a Democrat appointed on September 30, 2005 to fill the vacancy left by Linda Kelly. Commissioner Goldberg frequently sits as the lead Commissioner concerning cable television and telecommunications dockets. The balance of the DPUC, Chairman Donald Downes, a Republican, and Commissioner Jack Betkoski, a Democrat, were first appointed on July 1, 1997, reappointed to their third four-year terms in 2005, and have terms that expire on June 30, 2009. Of the current DPUC Commissioners, Commissioner Palermino is the lone Governor Rell appointee; the remaining Commissioners were appointed by Governor Rowland.

CABLE THEFT

Numerous cases were initiated in the U.S. District Court for the District of Connecticut over the past few years under the applicable cable theft statutes, 47 U.S.C. § 553 and § 605. However, a development in a case emanating from the District of Massachusetts suggests that the availability of Section 605 of the federal Communications Act as a remedy for cable operators may become more limited in the future. Prior to 2006, the divide had been clear: § 605 could be used to combat cable theft in the Second Circuit (including Connecticut, New York, and Vermont), but could not be used in the Third or Seventh Circuits. Use of § 605 in other federal jurisdictions, including Massachusetts, varied depending on the particular court. As other federal appellate courts had not yet weighed in on the issue, both the pro- and anti- § 605 camps were well defined and with adequate authority to support their position.

In August 2006, the United States Court of Appeals for the First Circuit, which includes Massachusetts, Rhode Island, Maine and Puerto Rico, recently joined the Third and Seventh Circuits to deny cable operators relief from theft of services under 47 U.S.C. § 605.[16] The Court held that § 605, which prohibits the unauthorized interception of radio communications, does not include signals delivered by wire over a cable network. This ruling substantially changes the legal landscape by putting the Second Circuit – the lone circuit to allow § 605 as a tool to combat theft of services – at a significant three-to-one disadvantage.

What does this mean? The ruling clearly demonstrates a shift away from using § 605 to stop cable thieves. While cable operators still have remedies available under 47 U.S.C § 553, § 605 provides more robust remedies and addresses needs not covered by § 553. Specifically, unlike § 553, § 605 contains provisions that directly deal with manufacturers and distributors of illegal equipment used to steal cable. No similar language exists under § 553. Moreover, based on the First Circuit ruling, a cable operator pursuing a manufacturer or distributor under § 553 must now file a separate lawsuit for each instance of theft (e.g., each time a distributor sells an illegal theft device) in order to recover adequate damages. Finally, § 605, unlike § 553, contains mandatory language directing the full recovery of a cable operator's attorneys' fees associated with any theft of service litigation – a key provision necessary to make the pursuit of cable thieves cost effective.

TELECOM COMPETITION DEVELOPS SLOWLY

Guest Column by Rob Howley

In 1994, the Connecticut Legislature passed Public Act 94-83 (the "Connecticut Act") in an effort to establish a framework for the development of telecommunications competition in the Connecticut telecommunications market. As codified in Sections 16-247a, et seq., of the Connecticut General Statutes, the Connecticut Act states that it is a goal of the state "to promote the development of effective competition as a means of providing customers with the widest possible choices of services." However, despite, the pro-competitive goals of Public Act 94-83 and the passage of the Telecommunications Act of 1996 ("1996 Act"), facilities-based local service competition remains nascent in Connecticut. The limited state of competition in Connecticut today is apparent based on several recent reports issued by the FCC. Both demonstrate not only that SNET remains the dominant provider of telephone service within the state but that competitive inroads are actually on the decline. These trends should cause policy makers to think carefully before reducing or removing existing regulatory structures that have enabled competition to gain a foothold here and nationally.

Today in Connecticut, SNET has close to 2 million total switched access lines in contrast to CLECs who serve only 227,752 switched access lines.

First, on a national basis, telephone subscribership has increased from 92.4% to 92.8% in March 2006 (compared to March 2005). Connecticut's increase was even more substantial – 92.7% to 94.9%.[17] However, these customers are not going to competitive local exchange carriers ("CLECs"), as evidenced by the information below.

Second, despite this overall increase in telephone subscribership, the FCC's most recent *Local Telephone Competition Report* shows that competition is decreasing. For example, the data shows that the number and percentage of incumbent local exchange carriers ("ILECs") switched access lines that are provided by UNE-based CLECs are in decline.[18] For carriers investing in their own network, the picture isn't any better. Unlike ILECs, facilities-based CLECs have really just begun to build networks and compete. CLECs have been working hard at investing their own capital to lease, build and/or enhance network facilities and developing their own back-office infrastructure and, at the same time, wrestling with those same ILECs to establish reasonable wholesale terms in interconnection contracts, monitor ILEC performance under those contracts, and enforce failures. And despite rhetoric to the contrary, CLECs and ILECs are not peers. CLECs cannot replicate ILECs' network, size and legacy.

[16] Charter Communications Entm't I, DST v. Burdulis, 460 F.3d 168 (1st Cir. 2006).

[17] Belinfante, Alexander, Telephone Subscribership in the United States (data through March 2006) Federal Communications Commission, Industry Analysis and Technology Division (rel. October 2006).

[18] Industry Analysis and Technology Division, Wireline Competition Bureau, Local Telephone Competition: Status as of December 31, 2005 (rel. July 2006) (reporting decline in total number of competitive LEC lines served using unbundled loops and switching).

Thus, data regarding the state of competition is not encouraging. Today in Connecticut, SNET has close to 2 million total switched access lines in contrast to CLECs who serve only 227,752 switched access lines. This means that the total CLEC share of the market represents a mere 10%.[19] After SNET's parent AT&T was acquired by SBC and MCI by Verizon, the cable industry became the principal facilities-based voice competitor for those Connecticut customers who actually have a choice. However, as the statistics above show, cable telephony is not yet a formidable alternative for consumers.

So what can Connecticut policymakers do to help foster facilities-based competition - the preferred mode of entry envisioned by the drafters of the Connecticut Act and the 1996 Act? Don't believe the hype. SNET isn't losing to competitors – it is acquiring them. Accordingly, Connecticut should ensure that the competitive goals of the Legislature and the 1996 Act are met by resisting any efforts to impose ILEC styled regulations on CLECs and by ensuring that today's competitive safeguards (such as interconnection rights) remain in place – until such time as CLECs have a chance to catch up to an ever–increasing competitor.

Rob Howley heads up telecommunications-related regulatory affairs for Cox Communications in New England and Ohio as Director of Regulatory Affairs.

EPILOGUE

On balance, 2006 was a year of mixed results for the cable industry in Connecticut. While legislative enactments that would correct the DPUC ruling favoring SNET did not pass, Connecticut cable operators scored points when legislators, regulators, municipal leaders, advisory councils, and access users recognized the benefits that the cable industry brings to our communities. In addition, cable systems fought hard to attract new customers by offering new services – high definition video, enhanced on-demand programming, higher speed Internet access and telecommunications services – stemming the tide of basic customer loss to satellite television services.

From a personal perspective, 2006 was bittersweet for the Murtha Cullina LLP Cable Practice Group in that our dear, long-term colleague and friend, Attorney Sharon Codeanne, departed to join Comcast's government affairs group. Our loss is definitely Comcast's gain.

In 2007, the Cable Practice Group of Murtha Cullina LLP looks forward to continuing to represent and advance the interests of the cable industry in Connecticut and elsewhere.

[19] Industry Analysis and Technology Division, Wireline Competition Bureau, Local Telephone Competition: Status as of December 31, 2005 (rel. July 2006).

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