Primer on State Efforts to Reform Telecommunications Policies

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Context for Reform: A New World of Communications

- Ample evidence suggests that the U.S. is on a consumer-driven path that is transitioning away from traditional voice communications supported by the PSTN.
   - Wireline telephony reached its peak in December 2000 when there were over 193 million lines in service.¹ At that time, the number of wireless subscribers in the U.S. had just surpassed 100 million, up from only 5+ million at the end of 1990.²
   - By 2004, the FCC found that the number of wireless consumers had eclipsed the number of POTS lines.³ The Yankee Group found that, by 2002, consumers were using more minutes on their cellphones than on their landline phones for the first time ever.⁴
   - By June 2011, the FCC reports that there were “112 million end-user switched access lines in service and 34 million interconnected VoIP subscriptions in the United States.”⁵ CTIA reports that, as of December 2011, there were over 331 million wireless connections in the U.S. – more than one line for every person in the U.S.⁶ For additional perspective, consider that:
     - Between Dec. 2008 and June 2011, the number of traditional telephone lines decreased by 20% while the number of VoIP subscriptions increased by 50%.⁷
     - The total number of wireless subscriptions has more than tripled since 2000.
     - Of the 146 million wireline retail local telephone connections in service in June 2011, only less than 40% were residential switched access lines.⁸
     - More than 31% of all U.S. households are currently wireless-only (i.e., have “cut the cord”). This represents a threefold increase over the last five years.⁹
     - By one estimate, only 6% of the U.S. population “will still be served by the PSTN by the end of 2018.”¹⁰
• Importantly, there are numerous wireless carriers vying to serve the customer: 97% of the population is covered by 3 or more facilities-based wireless providers; almost 90% is covered by 5 or more providers.11

○ Concomitant with the rise in popularity of VoIP and wireless voice services has been an explosion in consumer demand for and use of broadband Internet services.

• The FCC reports that, at the end of 2000, there were 7.1 million total broadband connections in the U.S.12

• By December 2005, that number had risen to approximately 51 million wired and wireless broadband connections in the U.S.13

• By June 2011, there were more than 206 million wired and wireless broadband connections throughout the United States.14

▪ Equally as important is the rise in popularity and prevalence of non-voice IP-enabled communications. Indeed, consumers have and are utilizing numerous alternatives for communicating:

○ Text messaging has quickly become a preferred means of communication by users of all ages and has become particular popular among younger users.

• According to CTIA, wireless subscribers in the U.S. send approximately 190 billion texts each month, compared to only 250 million per month in 2001.15

• Pew recently reported that 31% of those who text prefer text messages to talking on the phone.16

○ A rapidly growing number of Internet users are using social networking tools like Facebook and Twitter to communicate and stay in touch in real time. Pew reports that nearly two-thirds – 65% – of online adult use social networking sites.17

○ An increasingly popular means of communication is via video calling services like Apple’s Facetime and Facebook's Video Calling service via Skype. In 2010, Pew noted that one in five American adults had used a video calling program.18 NPD estimates that use of these services will grow fivefold by 2015.19

Examples of State-Level Initiatives: Telecommunications Reforms

▪ In recognition of these and other trends in the communications space, Congress, the FCC, and a growing number of state legislatures have begun to revisit and modernize regulatory frameworks in an effort to more efficiently govern a dynamic marketplace.
For example, even though the FCC has not officially classified VoIP as an information service, more than 20 states and the District of Columbia have statutorily exempted VoIP from state PUC authority. These states include:

- Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin.

Similarly, a growing number of states are deregulating telecommunications services. Indeed, over the last few years, over 20 states have enacted wide ranging telecom reform legislation that seeks to, among other things, adjust regulation to reflect the modern communications marketplace and recalibrate PUC jurisdiction accordingly.20

In general, these efforts have focused on removing legacy rules and regulations from the books in an effort to foster competition among voice service providers. States have gone about this in several different ways.

- In Florida, for example, the Telecommunications Reform Act of 201121, among other things:
  - Eliminates PSC jurisdiction over retail telecommunications;
  - Tasks the Department of Agriculture and Consumer Service Shifts with handling retail customer complaints;
  - Makes the filing of tariffs optional; and
  - Otherwise removes PSC jurisdiction over many aspects of traditional wireline voice services

- The goal of this Act was to eliminate any competitive disadvantages imposed on traditional wireline voice providers by legacy rules. In other words, the goal of the legislation was to ensure that market forces – and not regulation – pick winners and losers in the marketplace.

- In Wisconsin, recent legislation22 similarly updates the regulatory approach to POTS. In particular, the new law rationalizes regulation by eliminating PSC authority to set rates for POTS providers. Moreover, the new law prohibits the PSC from regulating data services, auditing voice service providers, and investigating consumer complaints.

  - This new law is also notable in its approach to easing COLR rules. The law allows an ILEC to file for a waiver from COLR obligations. The PSC can grant this petition if the carrier demonstrates that the waiver is in public interest or that
effective competition exists for basic voice service in the local exchange. All legacy COLR/“obligations to serve” sunset in April 2013.

- In an effort to “modify outdated regulation, eliminate unnecessary regulation, and preserve[] and advance[] universal service,” while also “encourage[ing] private-sector investment in the telecommunications marketplace,” Arkansas enacted a law in 2011 that, among other things, removed “quality-of-service regulation of wireline services provided in the competitive exchanges of electing companies.”

- Alabama, Georgia, Mississippi, North Carolina, and Texas, among others, have enacted similarly comprehensive legislation in recent years in an effort to remove outdated rules and requirements for incumbent exchange carriers. Similar regulatory reform legislation is pending in a number of states across the country.

- In sum, these laws represent an attempt by states to ensure that their residents have affordable access to next-generation communications services. Removing legacy rules, allowing for more pricing flexibility, and otherwise decreasing the regulatory burdens that have applied to POTS providers over the last 30 years will help ensure that market forces increasingly govern how providers respond to changing consumer preferences.

**Takeaways**

- Although reform-oriented efforts have been cast in a negative light by some stakeholders in the public and private sectors, it is possible to identify four positive aspects of these deregulatory approaches:

  - **First**, most, if not all, of these new laws and regulations are forward-looking in nature.
    
    - They are conscious attempts to move away from legacy rules that were devised to promote competition among LECs. These complex rules – fraught with inefficient cross-subsidies and riddled with loopholes that have encouraged fraud – were originally crafted in an effort to assure universal POTS service.

  - **Second**, they are mostly market-oriented in nature and seek to promote competition in a space that is characterized by multiple platforms and disruptive innovation.
    
    - Legacy rules reflected a decidedly less vibrant marketplace, one dominated by traditional wireline voice service. Now, with the emergence of viable – and more affordable – alternatives like VoIP and wireless, consumers are cutting the cord by the millions and giving up POTS. New deregulatory policies at the state level reflect these market trends and seek to support organic market forces.

  - **Third**, a key goal of these reform efforts is to provide regulatory certainty and parity to firms in the marketplace.
As new services and competitors have emerged in the voice space, there has been significant uncertainty regarding whether and how existing rules and regulations - originally forged to govern POTS - might apply. In the absence of legislative guidance, some regulatory authorities have attempted to impose legacy rules on new competitors, which have resulted in lengthy court battles and other impediments to organic market dynamics.

Deregulatory policies, often implemented by statute, provide competitors with certainty by removing rules that are inappropriate for a competitive market.

Fourth, new deregulatory policies at the state level and modernized regulatory frameworks at the federal level work together to enhance consumer welfare.

Consumers are best served by service providers that are able to compete and make investments in a marketplace free of outdated regulations. Indeed, removing cross-subsidies, price regulation, and other policies that propped up inefficient business models allow market forces to guide this space.

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Endnotes


3 Compare In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report, at Table 1, FCC (Sept. 2006), with Local Telephone Competition: Status as of December 31, 2005, at Table 1, FCC (July 2006).


7 Local Telephone Competition – June 30, 2011 at Table 1.

8 Id. at 2.

9 Wireless Quick Facts.

See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fifteenth Report, at 6, FCC 11-103 (June 2011).


Wireless Quick Facts.


Full text of this bill can be found at http://laws.flrules.org/files/Ch_2011‐036.pdf.

Full text of this bill can be found at https://docs.legis.wisconsin.gov/2011/related/proposals/jr1_sb13.


Full text of this bill can be found at http://e‐lobbyist.com/gaits/text/324571.


Full text of this bill can be found at http://billstatus.ls.state.ms.us/documents/2012/pdf/HB/0800-0899/HR0825SG.pdf.

Full text of this bill can be found at http://www.ncga.state.nc.us/Sessions/2011/Bills/Senate/PDF/S343v4.pdf.

Full text of this bill can be found at http://www.sos.state.tx.us/statdoc/bills/sb/SB980.pdf.

For an overview of these bills, see *The Year in Review* at Appendix.