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# Characterizing Competition: A Look at State Processes

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Sherry Lichtenberg, Ph.D.
Principal Researcher – Telecommunications
National Regulatory Research Institute

# Defining competitive markets is a prelude to reducing regulation

- Traditional definitions turn on customer choice
  - Are there multiple suppliers and products in the market?
  - Are competitive products functionally equivalent?
  - Have barriers to entry been reduced sufficiently to attract and retain competitors?
- Substitutable products  may increase choice and discipline competitors
  - No single company can dominate, because customers have multiple options
  - Quality remains stable or increases
  - No customer is "left behind"
- State commissions have a key role in determining when competition can replace regulation

# Commissions must determine when competition is sufficient

Perfect competition, which is the ideal, is not needed; the market need only be adequately competitive. Given the inefficiencies inherent in economic regulation, a market need not be perfect, or even near-perfect, to produce better outcomes for consumers than traditional regulation, given the well-documented inefficiencies of the latter, and its shortcomings in an increasingly competitive market.

New York Public Service Commission, Case 05-C-0616, "Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings" (issued and effective April 11, 2006), at 42.

# States Use Four Methods to Declare Markets, Providers, and Products Competitive

- Legislative mandate
- Carrier self-nomination (“election”)
- Finite test
- Effective competition rulemakings

# State Competition Matrix

**Table 1. State Competition Matrix**

| Competition Definition | States |
|---|---|
| **Legislation Designates All Providers Competitive** | Alabama, Florida, Hawaii, Illinois, Indiana, Maine, Michigan, Missouri, New Hampshire, North Dakota, Wisconsin |
| | |
| **Finite Competition Test** | |
| ILEC+1 | Delaware, Idaho, South Carolina, South Dakota |
| ILEC+2 | Kansas, Mississippi, Ohio, Texas |
| | |
| **Carrier Elects Competitive Status** | Arkansas, North Carolina, Nevada, Tennessee |
| | |
| **Commission Determination** | Alaska, Arizona, California, Colorado, Connecticut, DC, Georgia, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Vermont, Washington, West Virginia, Wyoming |

# The Legislative Mandate

- Legislation defines all carriers as competitive
  - No formal investigation
  - Carrier may need to “declare” its decision
  - Some conditions on carrier or market size
- Regulation significantly reduced or eliminated entirely
  - Competition will discipline the market
  - Multiple suppliers ensure customer choice
- Some states continue to require basic local service and COLR obligations

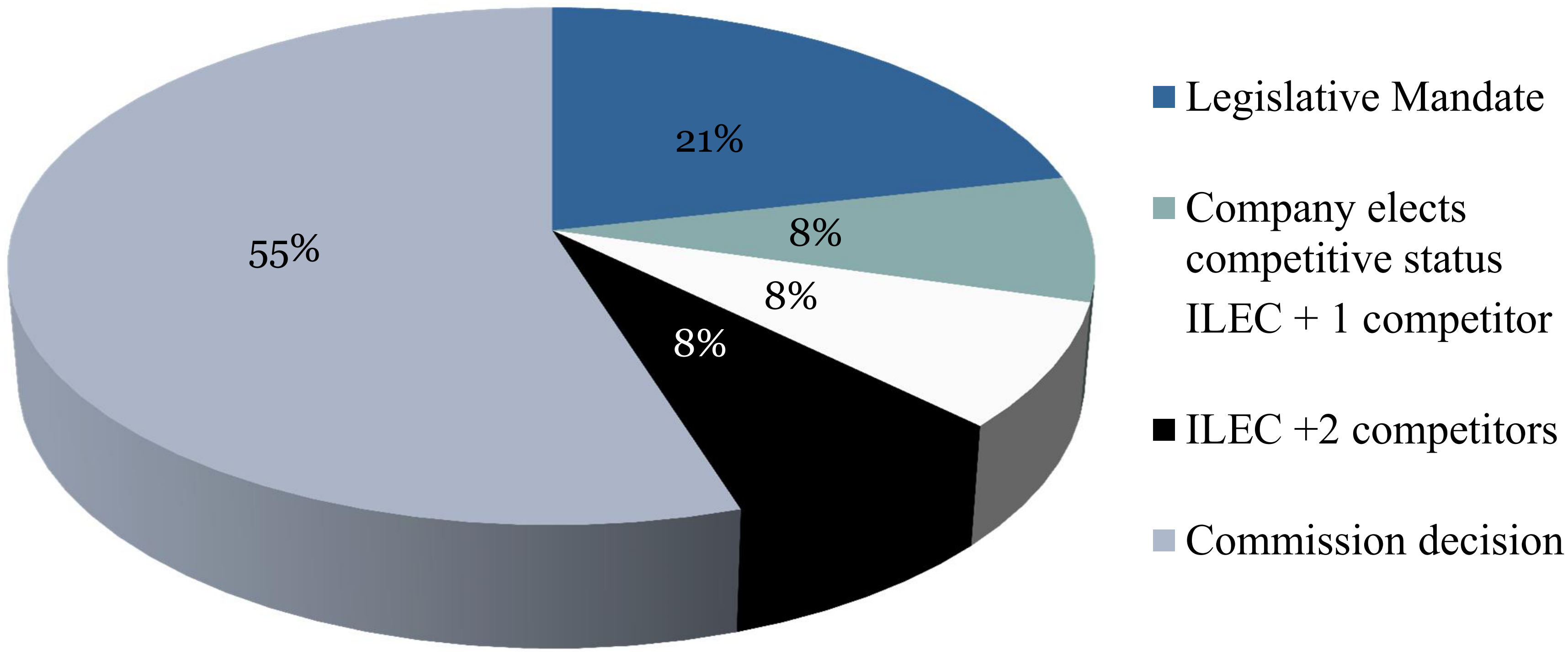
# Carrier Election

- Similar to Legislative mandate
  - Competition is sufficient to discipline the market
  - Level the playing field
  - Treat traditional and new technologies the same
- Carriers "elect" to be considered competitive
  - Notify the commission
  - Regulatory requirements eliminated
- Primarily in the states where the Bell South was the primary ILEC
  - Arkansas, North Carolina, Tennessee
  - Nevada

# The Finite Test: Counting Competitors

- The number of carriers required to define a competitive market differs by state
  - 4 states: ILEC + 1 Competitor
  - 4 states: ILEC + 2 Competitors
- Competitors must be "unaffiliated" with the ILEC
- Product offerings must be "substitutable" for wireline voice
  - Wireless,
  - Cable
  - Interconnected VoIP
- Some states may also consider line loss and over the top VoIP providers

# Over half the states require state commission investigations to designate competitive carriers



# Commission Review and Approval

- 27 states require Commission approval of requests for competitive treatment
  - Specific products/services or locations may be judged competitive
  - AFOR plans may create specific requirements
    - Maintain COLR/basic service availability
    - Broadband build-out
- 8 states may re-regulate if they determine it necessary
  - Reduced competition
  - Evidence of reduced quality, on-going consumer problems, predatory behavior
  - No state has taken this step to date

# Moving forward: Recommendations for reviewing and evaluating competition

- Engage in granular reviews of competitors and competition
- Consider business and residential market competition separately
- Consider the availability of alternate broadband suppliers before including over the top VoIP providers in the list of competitors
- Periodically re-evaluate the level of actual competition
- Remember that consumer choice is the best indicator of effective competition

# Proposed research topic

## 2014 Legislation Update

State legislatures continue to consider changes to state statutes to reduce or eliminate commission oversight of telecommunications services.  Bills are currently pending in Indiana, Iowa, Kentucky, Massachusetts, Montana, New Mexico, and Pennsylvania, with more expected.  This paper will review the status of regulation across the country in 2014 and discuss the effects of relaxed regulation on commissions, consumers, and carriers.