

## Telecommunications Oversight 2017: A State Perspective\*

*Sherry Lichtenberg, Ph.D., Principal for Telecommunications Research and Policy*

Although much legislation reducing or limiting state oversight of telecommunications services, including VoIP, has been enacted across the country in the 22 years since the Telecommunications Act of 1996, state public utility commissions continue to support the public interest and ensure that customers receive quality services by monitoring end-user service quality and reliability and identifying and resolving customer concerns, regardless of the type of service they have chosen. State commissions continue to oversee such key regulatory areas as carrier certification, ETC designation, emergency services, network quality, carrier of last resort obligations (COLR), and consumer complaints for both wireline and VoIP services.

NRRI surveyed state public utility commissions in 2017 to identify how the states have addressed changes in telecommunications oversight. No state responded that it retained no jurisdiction over wireline services, despite sometimes broad state legislation reducing commission oversight. And a significant number of states responded that they also retain jurisdiction over key services provided by VoIP carriers, most importantly, the ability for end users to access emergency services. These states continue to accept customer complaints about service quality, billing, and other consumer issues, regardless of the technology used to offer the service. They refer these complaints to the provider, track their status, and reserve the right to initiate formal proceedings where necessary and appropriate.

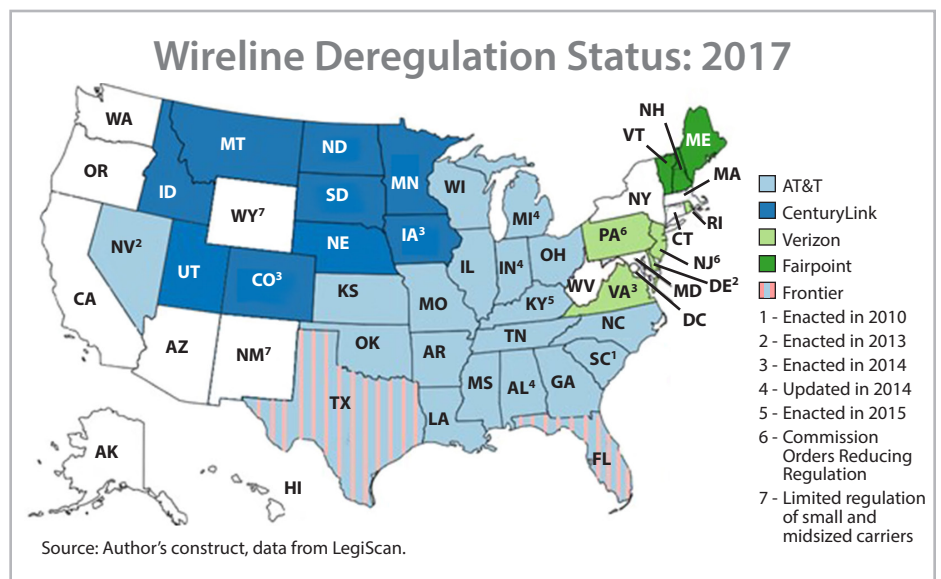
In addition, states continue to certificate or register wireline and VoIP carriers to operate in their jurisdictions, both to ensure that these carriers contribute to federal and state universal service funds

and to identify points of contact for problem resolution. They certify Eligible Telecommunications Carriers (ETCs) and Lifeline providers. They collect and act on outage data and ensure the availability of emergency service.

As required under Sections 251 and 252 of the 1996 Act, the states also continue to oversee wholesale services, including Inter-carrier Agreements (ICAs), numbering, the collection and distribution of state and federal universal service funds, Lifeline, basic local service (in some states), carrier of last resort services (in those states that still require it), and Telecommunications Relay Services (TRS), to name only a few.

Oversight of retail wireline telecommunications services in the United States has been reduced over time as a result of increased competition and the transition of end-users from traditional wireline service to the more lightly regulated wireless and voice over Internet protocol (VoIP) services.

As of December 2017, thirty-five states had passed legislation limiting direct oversight of the retail wireline telecom-



\*The full text of this paper is available at [nrri.org](http://nrri.org).

munications services provided by the large incumbent price cap service providers. In addition, Iowa, Pennsylvania, New Jersey, and Rhode Island had reduced oversight in either all or part of the state after a formal commission examination and review proceeding.

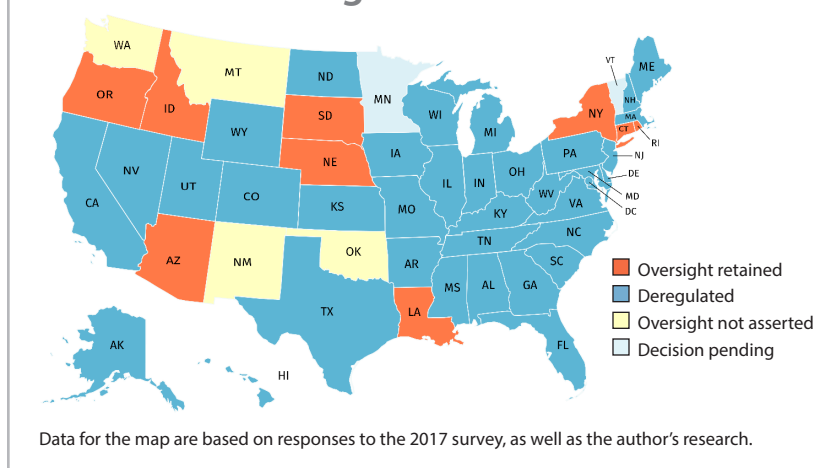
Twelve states and the District of Columbia continue to exercise traditional oversight of services provided by large incumbent providers, although these states have reduced or eliminated many traditional regulatory requirements, including tariffs and price regulation.

State legislatures have also actively addressed the question of the regulatory classification of IP-enabled services, including inter-connected Voice over Internet Protocol (VoIP). Thirty-four states have passed legislation limiting commission oversight of these services.

Staff in 10 states report that they continue to assert oversight of VoIP carriers. In five states—Alaska, Montana, New Mexico, North Carolina, and Oklahoma—state legislation does not specifically limit oversight of VoIP, but the state commission has chosen not to assert jurisdiction over these carriers.

Litigation in Minnesota, Vermont, and Oregon addresses the question of the proper classification of VoIP as either a telecommunications service or an information service. On September 8, the U.S. Court of Appeals for the Eighth Circuit ruled in favor of Charter in a case testing the limits of the State PUC's oversight of VoIP. Ruling against the Commission, the Court found that VoIP is an "information service rather than a telecommunications service," and that "state regulation of an information service conflicts with the federal policy of non-regulation, so that such regulation is preempted by federal law."<sup>1</sup> The question of the proper

## IP Regulation 2017



classification of VoIP remains pending in Vermont and Oregon. The Vermont Public Utility Commission has completed Phase I of its investigation into the proper regulatory designation of VoIP but continues to review oversight requirements, while Oregon continues to explore the legal requirement for VoIP providers to contribute to the state universal service funds.

Reductions in commission oversight of telecommunications through legislation and/or commission action have posed new challenges for state public utility commissions as they seek ways to ensure that communications providers' private goals align with the public interest. Understanding the limits of the states' jurisdiction over communications will help states determine the specific areas where competition and customer awareness may not be sufficient to ensure that service levels continue to be acceptable, regardless of the technology providing that service. These areas may require additional commission oversight or support to ensure that consumers continue to enjoy the benefits of their growing communications options.

<sup>1</sup> Charter Advanced Services (MN) LLC, and Charter Advanced Services VIII (MN), LLC v. Nancy Lange, Appellate Case 17-2290, United States Court of Appeals for the Eighth Circuit, available at [https://www.pacermonitor.com/public/case/21678738/Charter\\_Advanced\\_Services,\\_et\\_al\\_v\\_Nancy\\_Lange,\\_et\\_al#](https://www.pacermonitor.com/public/case/21678738/Charter_Advanced_Services,_et_al_v_Nancy_Lange,_et_al#).

### About the Author

Dr. Sherry Lichtenberg is NRRI's Principal for Telecommunications Research and Policy. She supports state public utility commissions, industry, and others in understanding key telecommunications issues. She has published numerous papers on telecommunications policy, including a yearly review of telecommunications legislation and studies of quality of service, competition, state universal service funds, and broadband service quality.

### About NRRI

The National Regulatory Research Institute (NRRI) was established in 1976 as the research arm of the National Association of Regulatory Utility Commissioners (NARUC). NRRI provides research, training, and technical support to State Public Utility Commissions. NRRI and NARUC are co-located in Washington, DC.

