Examining the Role of State Regulators as Traditional Oversight is Reduced

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July 11, 2015
Telecommunications deregulation continued in 2015

- By July 2015, 36 states had legislatively eliminated or significantly reduced oversight of retail telecommunications, including basic local service.
- 44 states had specifically eliminated oversight of VoIP and other IP-enabled services.
- 2 State Commissions granted ILEC petitions for reduced oversight:
  - Elimination of tariff requirements
  - Reduced oversight of “basic local service”
- 1 state defined VoIP as a “telecommunications service,” bucking the deregulatory trend.
- 2 states began the process of determining how to manage the IP transition – including service discontinuance.
2015 legislation extends/refines deregulation

- Kentucky legislature passed HB 152, deregulating retail services
  - Final state in the AT&T ILEC footprint
  - Eliminates regulation of retail services in areas with >50K lines
  - Protects areas with <50K lines
  - Customers may “test drive” VoIP and wireless replacement products
  - State commission may “assist” in the adjudication of customer complaints
- Idaho defines VoIP as “not a telecommunications service” and removes regulation
  - No registration or CPCN requirement
  - State consumer protection rules continue to apply
- Nevada made wholesale performance metrics “optional”
- North Dakota eliminated pricing oversight of basic local service; deregulated VoIP and IP-enabled services
- Wyoming eliminated basic service oversight in competitive areas
2015 Commission decisions proactively address oversight requirements

- New Jersey – Settlement agreement reduces oversight
  - Deregulates pricing for basic service but schedules price increases
  - Retains service quality standards for 3 years
  - Retains commission oversight of customer complaints

- Pennsylvania – Order limits oversight in competitive areas
  - Reduces basic service oversight in competitive areas; retains oversight where competition is not sufficient to discipline the market
  - Eliminates service quality metrics in competitive areas, but requires re-evaluation in 5 years
  - Examines the definition of substitutable services
  - Does reduce or eliminate COLR requirements

- Minnesota defines VoIP as a telecommunications service
  - Complaint against Charter Communications
  - VoIP providers must follow MN retail telecom regulations, pay USF charges, contribute to state funds
Despite deregulation, key telecom decisions remain with the states

- At what point can/should traditional services be phased out?
  - State requirements vs. federal requirements for withdrawing service
  - Process for notifying customers, ensuring continued service
  - What services should remain?
  - Defining/identifying substitutable services
  - Examining the true level of competition

- Carrier of last resort requirements – anachronism or necessity?
  - Where and under what conditions are they needed
  - Is wired, landline service still a prerequisite for universal service
  - Broadband substitution

- Service availability and reliability
  - Can states ensure service quality without oversight
  - Should availability and reliability requirements be limited to emergency services?
Section 214 of the Telecommunications Act establishes the rules for withdrawing interstate services
- Petition the FCC to show the availability of alternate suppliers, notify customers, notify competitors
- FCC proceeding open to review substitution and notice requirements

State rules generally track these requirements
- ILECs have not rushed to propose the elimination of basic service
- AT&T expected to pursue discontinuing some wireline services at the end of the IP transition trial

Substitutable services must be defined before the process begins

Michigan, Maryland, and Ohio addressing the discontinuance process
- Maryland – by 9/15/15, identify areas where service could be withdrawn; develop a process to notify customers
- Michigan – track the results of the AT&T trial; implement the FCC process
- Ohio – establish a collaborative process to identify areas where customers will not have adequate choice and BLS must be retained; identify alternate suppliers or require ILEC to continue service
Carrier of last resort (COLR) requirements

- ILEC must traditionally offer service to all who request it
  - Build facilities to all areas, but may charge for construction
  - Receive SUSF monies (and FCC high cost funds) for areas that are costly to serve
  - Regulations do not apply to alternative suppliers
- Legislation has sought to rationalize COLR requirements by limiting them to areas without competition
  - Retains the requirement that the ILEC provide service
  - Allows service to be provided using “any technology” including wireless and, in some areas, satellite
- Multiple states addressing modifications to COLR requirements
  - Maine: option for transitioning COLR to other suppliers
  - Colorado, Wyoming, others: COLR for areas without competition; reductions in SUSF support
Service availability and reliability

- States retain oversight of service availability and reliability to the extent they affect emergency services
  - Day to day quality of service standards eliminated in deregulated states
  - State level quality standards for VoIP are yet to be developed
  - Outage reporting standards still in flux
- States examining service quality, including the need for battery back-up
  - DC studying copper maintenance – has the transition to fiber allowed traditional circuits to degrade?
  - New York studying service quality, competition, and availability
  - NJ: proposed legislation would require outage reporting
States retain a key role in telecommunications oversight

- Deregulation has set the stage for a reduction in oversight, but the states must determine how/when rules must be modified
  - Identify emergency service requirements
  - Manage the transition to new services
  - Develop new metrics where appropriate

- States must define/track competition to ensure it continues
  - State statutes give the commission authority to define competitive areas and competitors
  - But the definition of “substitutable services,” particularly for residential customers, remains vague

- PAPUC order reducing regulation in competitive areas provides a key touchstone for state commissions:

  Regulation does not exist for regulation’s sake. Rather, regulation seeks to produce a competitive result where there is no competition to do the same. Where sufficient competition exists, regulation is not needed and should be reduced or perhaps even discontinued.