



Characterizing Competition: A Look at State Processes

Sherry Lichtenberg, Ph.D.

Principal Researcher for Telecommunications

NRRI

Report No. 14-01

February 2014

© 2014 National Regulatory Research Institute
8611 second Avenue, Suite 2C
Silver Spring, MD 20910
301-588-5385
www.nrri.org

National Regulatory Research Institute

Board of Directors

- Chair: Hon. **Betty Ann Kane**, Chairman, District of Columbia Public Service Commission
- Vice Chair: Hon. **Greg R. White**, Commissioner, Michigan Public Service Commission
- Treasurer: Hon. **Travis Kavulla**, Commissioner, Montana Public Service Commission
- Secretary: **Rajnish Barua**, Ph.D., Executive Director, NRRI
- Hon. **Susan K. Ackerman**, Chair, Oregon Public Utility Commission
- Hon. **David W. Danner**, Chairman, Washington Utilities and Transportation Commission
- Hon. **Elizabeth B. Fleming**, Commissioner, South Carolina Public Service Commission
- Hon. **James W. Gardner**, Vice Chairman, Kentucky Public Service Commission
- **Charles D. Gray**, Esq., Executive Director, NARUC
- Hon. **Robert S. Kenney**, Chairman, Missouri Public Service Commission
- Hon. **David P. Littell**, Commissioner, Maine Public Utilities Commission
- Hon. **T. W. Patch**, Chairman, Regulatory Commission of Alaska
- Hon. **Paul Roberti**, Commissioner, Rhode Island Public Utilities Commission

About the Author

Sherry Lichtenberg, Ph.D. is the Principal for Telecommunications at the National Regulatory Research Institute. Her telecommunications background includes competitive advocacy on the state and federal levels, operational support-systems design, performance metrics, contract arbitration, program management, and third-party testing. She has been a product manager, business manager, and operations leader for AT&T, MCI, and Verizon Business competitive local services. Dr. Lichtenberg received her Ph.D. in English Literature from Rutgers University.

Acknowledgments

The author thanks Hon. **David W. Danner**, Chairman, Washington Utilities and Transportation Commission, **Thomas Wilson**, Wyoming Public Service Commission, **Keith Oliver**, Home Telephone, and **Paul Vasington**, Verizon for taking the time to read and comment on this paper. She also thanks NRRI research assistant, Daniel Phelan, for ensuring that the charts in this paper provide easily understood and useable information.

Executive Summary

Legislation and commission rulemakings have resulted in reduced regulation and limited oversight of incumbent carriers in entire states, specific areas of states, or for specific products and services. These decisions have been a response to market developments and have been premised on the expectation that an increase in competition among telecommunications providers and products will benefit consumers by increasing choice, lowering prices, and ultimately increasing quality. Advocates of reduced regulation cite the theory that decreased regulation enhances competition by smoothing the path for new entrants, reducing prices, and increasing quality, because customers can "shop" for the plans and products that suit them best and providers can more quickly move to meet changing customer preferences. Others claim that reduced regulation disadvantages those consumers that depend on the Incumbent Local Exchange Carrier (ILEC) to serve as a carrier of last resort (COLR) and to provide standalone basic local service.

The states use four general methods to classify a carrier or a market as effectively competitive as a prelude to reducing regulatory oversight. In effectively competitive markets, no single carrier has the power to raise prices or lower quality, since customers may choose among multiple, substitutable products. In these markets, competition disciplines providers and the need for oversight is diminished.

Determining where competition has made markets competitive is a key task for state regulators and legislatures, since these decisions directly affect both customers and carriers. This paper reviews the processes the states use to test for effective competition in order to reduce oversight. These processes may be categorized as the legislative mandate, carrier election, the finite test, and commission review and decision. The implementation of these processes differs from state to state, but in each case has resulted in a less regulated market based on the level of competition and the availability of substitutable products.

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 is used primarily in those states, like Florida and Wisconsin, which have fully deregulated their telecommunications markets. In these states, the legislature rather than the state commission has determined that all carriers are competitive, without specific reference to their size, the products they offer, or the number of alternate suppliers in the market. The legislative mandate rests on the theory that new products and product categories, including wireless, interconnected Voice over Internet Protocol (VoIP), and over the top services like Vonage and Skype provide enough competition to discipline the market without commission or legislative oversight. In these states, commission oversight has been legislatively reduced or eliminated.

A second category of states allows carriers to "elect" deregulation by providing notice to the state commission. Electing carriers are exempted from the majority of state regulations. States that allow carriers to "elect" regulation may also require these carriers to meet certain criteria, including providing evidence that they face effective competition.

A third category of states uses a finite test to determine whether a market is competitive. In states using the finite test, regulation is reduced based on the number of suppliers in the market in addition to the ILEC, either on a statewide basis or by location (generally a wire center). The number of required suppliers is based on either the "ILEC plus one alternate provider" or the "ILEC plus two (or more) providers." Each competitor must be "unaffiliated" with the incumbent carrier, and the products they offer must be "substitutable" for wireline switched voice service. Facilities-based wireless carriers and wireline VoIP carriers such as cable voice providers are counted as competitors. In some cases, over the top VoIP providers are

also considered. In addition to reducing regulation, nearly half of the “finite test states” relax or remove carrier of last resort (COLR) requirements for competitive carriers.

Finally, a fourth decision category requires a commission evaluation of the level and type of competition in the state to determine if and where "effective competition" is sufficient to provide substitutable services at equivalent prices and with similar functionality and to protect consumers. In these states, carriers petition the commission for reduced regulation and are evaluated individually. If the commission finds "effective competition," oversight of the ILEC is reduced to the level enjoyed by their competitors. This category also includes states that identify specific areas of the state or specific products as competitive or not competitive and therefore subject to continued regulation, for example, basic local service, as well as states that provide specified criteria or other legislative guidance for the commission's evaluation. Some of the commission decision states allow carriers to seek "Alternative Regulation" plans that reduce regulation based on the carrier's agreement to certain requirements, including broadband build out.

The states are split almost evenly between those that require a full commission investigation to declare the ILEC or a specific area or set of products competitive and those that use the other three methods. Most importantly, a number of states retain the authority to review the status of competition on an on-going basis and re-regulate where necessary. Although the states take different routes to determining what products are substitutable and where regulation should be reduced, they all focus on ensuring that competition is sufficient to discipline the market and to ensure service availability, promote customer choice, and assure the availability of reliable and ubiquitous telecommunications for all citizens.

The determination that a market is effectively competitive and the decision to reduce regulation are complicated tasks. By understanding the way in which the states handle this issue, regulators and competitors can provide better information and ensure that the process of defining effective competition works smoothly. In discussing this issue, this paper focuses on voice communications services, whether they are offered by broadband or wireline suppliers. To that end, it reviews the ways in which the states designate carriers and products as "competitive" in order to reduce regulation. It reports on state efforts to determine if competition for telecommunications services is sufficient to relax or remove regulatory constraints, and identifies best practices for ensuring that robust competition continues to develop and grow. It examines regulations governing competition across the country in order to compare and contrast the methods used to make this determination. It provides insight into the way in which the states explore the questions of product substitution and competition, by reviewing competition proceedings in Washington and Colorado.

Finally, the paper suggests five key areas for focus going forward – the need for granular reviews of competition and competitors, the question of residential versus business competition, the need to examine competitive VoIP products separately from the broadband transport layer on which they ride, the need to re-evaluate the level of competition periodically, and the importance of using consumer choice to measure the success of competition. By focusing on these areas,

states can ensure that telecommunications service remains ubiquitous, affordable, and reasonably comparable for both urban and rural consumers, as competition replaces regulation.

This paper is directed to commissioners, staff, and state legislators who are in the process of reviewing or evaluating the success of deregulation. Readers in states where legislation is pending or yet to be introduced may use the information provided in this paper to understand how other states have addressed the question of competition as a surrogate for regulation and to propose legislation that takes into account both the pitfalls and the opportunities raised by these changes.

This paper solely reflects the author's research and opinions and does not represent the views of NRRRI or its Board of Directors.

Table of Contents

I.	Introduction.....	1
II.	Defining Competition	3
A.	Traditional Definitions.....	3
B.	The 1996 Telecommunications Act.....	5
C.	Product substitution	7
III.	State processes for defining competitive markets	8
A.	Identifying competitive areas.....	10
B.	The legislative mandate	11
1.	All services are competitive; BLS and COLR requirements removed.....	11
2.	All services are competitive, but BLS and COLR requirements are retained.....	13
C.	Carriers elect competitive status	14
D.	The finite test	15
1.	Incumbent plus one unaffiliated competitor	16
2.	Incumbent plus two unaffiliated carriers	17
E.	Commission review and decision	19
1.	Standards for evaluating competition	20
2.	Alternate forms of regulation.....	22
3.	Re-evaluation and reclassification	23
IV.	State Proceedings.....	25
A.	Washington	25

B.	Colorado.....	28
V.	Conclusions and Recommendations	31
A.	Engage in granular reviews.....	31
B.	Consider business and residential markets separately	31
C.	Consider the availability of alternative broadband providers, not just the number of competing voice services	32
D.	Periodically re-evaluate the level of actual competition.....	33
E.	Consumer choice is the best indicator of the effective competition	34

List of Tables

Table 1.	State Competition Matrix.....	v
Table 2.	The Legislative Mandate.....	11
Table 3.	Carrier Election.....	15
Table 4.	Finite Competition Test.....	16
Table 5.	Commission Determination.....	20

List of Figures

Figure 1.	Methods for Defining Competition.....	10
-----------	---------------------------------------	----

Characterizing Competition:

A Look at State Processes

I. Introduction

Legislation and commission rulemakings have resulted in reduced regulation and oversight of incumbent carriers for entire states, portions of states (based on the number of competitive suppliers and the availability of "substitutable" products), or specific products. These decisions have been a response to market developments and have been based on the expectation that an increase in competition among telecommunications providers and products will benefit consumers by increasing choice, lowering prices, and maintaining quality, since customers in competitive markets may "shop" for the plans and products that suit them best. As NRRI pointed out in its 2012 and 2013 reviews of state telecommunications legislation,¹ state legislatures have cited the need to "level the playing field" among the regulated incumbents and their more lightly regulated competitors as a key reason for reducing or eliminating state commission oversight.

The process used to classify a carrier as "competitive" and to reduce regulatory oversight differs from state to state. In what this paper terms the "fully deregulated states," all carriers are designated as competitive, regardless of their size, the products they offer, or the number of competitors in the market. In these states, commission oversight has been legislatively eliminated. There is no review to determine the level of "effective" competition in the state. A second category of states allows carriers to "elect" deregulation by providing notice to the state commission. In a third category, the "finite test states," regulation is reduced based on the number of suppliers and substitutable products in the market, either on a statewide or local exchange/wire center basis. The number of required suppliers varies from the Incumbent Local Exchange Carrier (ILEC) plus one to two (or more) competitors. Each competitor must be "unaffiliated" with the incumbent carrier, and the products they offer must be "substitutable" for wireline switched voice service. Finally, a fourth category requires a commission evaluation of the level of competition in the state to determine if and where "effective competition" is sufficient to provide options and protect consumers. Carriers are evaluated individually or as a class (such as all CLECs) and those facing "effective competition" are no longer regulated or regulation is reduced.² This category also includes carriers deemed competitive on a by location,

¹ See Lichtenberg, Sherry, (2012) The Year in Review: The Status of Telecommunications Deregulation in 2012, Report No. 12-06, National Regulatory Research Institute and Telecommunications Deregulation: Updating the Scorecard for 2013, Report No. 13-05, National Regulatory Research Institute

² In these cases, "deregulation" means reducing commission oversight over the products and services the company offers and, in some cases, withdrawing requirements for basic local service (BLS) and/or carrier of last resort requirements. In all of the categories, state commissions retain oversight of intrastate access services, 911, and wholesale services.

generally a wire center. This category includes states that allow carriers to seek "Alternative Regulation" plans that reduce regulation based on a carrier's agreement to certain requirements.

This paper reviews the processes the states use to designate carriers and products as "competitive" for the purposes of reduced regulation. It does not attempt to provide an economic analysis of the meaning of competition in the new telecommunications environment or to propose a new definition for "effective competition," but, rather, reports on state efforts to determine if competition for voice telecommunications services in the state is sufficient to relax or remove regulatory constraints. To that end, this paper explores how the states identify where competition is sufficient to discipline the market and when they may have to step in to resolve consumer problems, ensure service availability, promote customer choice, and assure the availability of reliable and ubiquitous telecommunications for all citizens.

Part I of this paper is the introduction.

Part II provides a brief overview of the ways in which economists, academics, providers, and the FCC have defined competition. This section also reviews how the 1996 Telecommunications Act addresses competition and explores how the multiple definitions for competition have led to state processes for evaluating and ensuring competition as a requirement for reduced regulation.

Part III reviews the ways in which the individual states examine telecommunications services and providers in order to determine whether competition is sufficient to reduce regulation. This part also includes a discussion on the effect of the decision to define a market as competitive on the requirement that carriers provide basic service. As noted earlier, the processes the states use to identify the level of competition can be divided into four specific categories, ranging from the legislative directive that "all services are competitive" to a full commission examination of the level of competition in the state, including an inventory of competitors and the potential for product substitution. Because the level of competition may change over time, this section also explores the way in which some states statutes include the opportunity to "relook" their decisions regarding competition and revise the rules when necessary.

Part IV reviews recent state regulatory activity designating carriers as competitive in order to identify best practices for making this critical decision. This part reviews Washington state's evaluation of Frontier's petition for deregulation based on the level of competition in the state, Colorado's current proceeding to determine what areas of the state are "effectively competitive," and the Iowa Utilities Board's evaluation of its telecommunications rules to determine where regulation should be retained, reduced, or eliminated altogether based on competition and the availability of products that may be substituted for traditional wireline switched voice service.

Finally, **Part V** suggests ways in which states can identify and adopt best practices for evaluating competition, including addressing the question of product substitution. This section also discusses the shift from residential competition to competition in the business market and

reviews the potential need for evaluating markets separately to determine whether there is sufficient competition to reduce regulation. Part V also recommends that the states review changes in competition over time.

This paper is directed to commissioners, staff, and state legislators who are in the process of reviewing or evaluating the success of deregulation. Readers in states where legislation is pending or yet to be introduced may use the information provided in this paper to understand how other states have addressed the question of competition as a surrogate for regulation and to propose legislation that takes into account both the pitfalls and the opportunities raised by these changes.

II. Defining Competition

As we noted in the introduction, the purpose of this briefing paper is to report on the various ways in which the states have defined "effective competition" as a precursor to relaxing or eliminating traditional regulation of the incumbent carriers. By understanding how others are addressing this issue, regulators and legislators can craft their own rules in response to a changing market. In this part of the paper we briefly review the traditional definitions of competition, as well as the treatment of competition in the 1996 Telecommunications Act (the Act).

A. Traditional Definitions

Traditional examinations of competition begin with a focus on market power. These examinations address the question of whether one company is large or powerful enough to dominate the market, control prices, and limit competition by making it difficult for alternate suppliers to enter the market. Theoretically, markets dominated by only a single (or even two) large suppliers must be regulated to control abuse. As both regulatory theorists like Alfred Kahn and Jean-Jacques Laffont, and regulators, including FCC Commissioner Ajit Pai, have pointed out, in markets with limited or no competition, regulation is necessary to align the behavior of companies with the needs of their customers when market forces are not strong enough to do so.³ Regulation is less necessary in markets where competition can discipline providers in order to protect consumers. For this reason, prior to the opening of telecommunications markets to competition, both the FCC and state commissions regulated the large telecommunications

³ See, for example Kahn, Alfred, *The Economics of Regulation: Principles and Institutions*, John Wiley & Sons, Inc. New York, 1970. See also, Laffont, Jean-Jacques, *The New Economics of Regulation, Ten Years After*, *Econometrica*, Vol. 62, No. 3 (May 1994), available at <http://econdse.org/wp-content/uploads/2011/12/Laffont-94-The-new-economics-of-regulation.pdf>, and Hempling, Scott, *Preside or Lead, The Attributes and Actions of Effective Regulators*, NRRI, 2010. FCC Commissioner Ajit Pai speaks to this same issue in his address on the anniversary of AT&T's decision to seek regulation to forestall competition. See Pai, Ajit, *Remarks of FCC Commissioner Ajit Pai at Techfreedom's Forum on the 100th Anniversary of the Kingsbury Commitment*, Washington, DC, December 19, 2013, available at www.fcc.gov.

carriers to ensure that consumers are treated fairly and, after the break-up of AT&T and the 1996 Act, to encourage competition.⁴

The alternative to markets where a single dominant competitor controls pricing and products is competition, where multiple suppliers offer consumers a choice of products and compete with each other based on price, availability, and quality. Economists theorize that such markets are better for consumers, since competition lowers prices, increases choice, and provides the discipline necessary to ensure "good" supplier behavior without requiring regulation. According to this theory, competition increases both quality and innovation, because consumers can "vote with their feet" and move from one supplier to another in order to seek the best value and because no regulator can have the knowledge and foresight to predict exactly what products and services consumers will prefer. Economists model a pure or "perfect" competitive market as one with a large number of suppliers (perhaps as many as 50 according to some theorists), where each company's market share is so small that no one can influence pricing or consumer buying behavior. In such a model of a perfect market, competition among suppliers is robust, market leadership changes rapidly, and new carriers enter and leave the market easily, because barriers to entry are low, and all suppliers have access to the same or similar technology. Pure competitive markets have no overall market leader, since a large number of suppliers offer nearly identical products, and consumer buying decisions are generally based purely on cost, as in an auction, with the lowest priced competitor winning.⁵ Perfect competition is, of course, an academic concept. The New York commission recognized this point several years ago, when it said that:

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.⁶

In actual markets, companies have different levels of market power, and dominant providers may drive competitors out of business or limit their success by reducing prices to a level where they can no longer compete. These markets need oversight to ensure that the largest

⁴ Some commentators theorize that AT&T initially "chose" to be regulated at the beginning of the 20th century in order to limit competition, allowing it to grow without having to fight for market share. See, for example, Cherry, Barbara A. (May 19, 2013), Ex parte filing, Technology Transitions Policy Task Force, GN Docket 13-5, Federal Communications Commission.

⁵ See David Chessler, Ph.D., Determining When Competition Is Workable: A Handbook for State Commissions Making Assessments Required by the Telecommunications Act of 1996, NRRI, July, 1996, p.5 <http://www.ipu.msu.edu/library/pdfs/nrri/Chessler-Workable-Competition-96-19-July-96.pdf>.

⁶ 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.

providers do not disadvantage consumers by reducing or eliminating competition. As markets begin to become more competitive, however, less regulation is required. When markets are "effectively competitive," multiple providers vie with each other for market share, but no single company is strong enough to dominate the market, control prices, or limit product availability, simply because it has the largest share. In these markets, multiple sellers differentiate their products by technology, quality, and/or customer service, and market share fluctuates. In an effectively competitive market, competition may be sufficient to discipline the players so that regulation may be reduced or eliminated. The number of players required to ensure effective competition is subject to debate, although some economists put it at between three and five,⁷ while others emphasize the importance of structural conditions in the market (such as free entry and exit) over the number of competitors, and some maintain that effective competition can exist with only two providers. As we will see later, a number of states have set a finite number of carriers as the key to defining competition for the purpose of relaxing regulatory oversight.

Effective competition may also be termed "workable competition." In a workably competitive market,

The behavioral and structural characteristics of pure competition (as defined by economists) might not be met, but that the deviations may still be of little economic consequence. . . [and] even where the deviations from competitive behavior and market structure do have significant economic consequences, there may be other economic benefits derived from the behaviors or structures that are of such benefit to society that they outweigh the losses stemming from the anticompetitive behavior and structures.⁸

As we discuss below, the concept of workable competition is a key part of both the 1996 Act and of subsequent state decisions to reduce telecommunications regulation.

B. The 1996 Telecommunications Act

The questions of effective competition and the determination of whether a single carrier is dominant in the market are central both to the market opening requirements of the 1996 Telecommunications Act and to the way in which individual state commissions and state legislatures have defined competition for the purposes of reducing or relaxing regulation. This section reviews the way in which competition is treated in the Act as background for reviewing individual state decisions on effective competition.

⁷ In *The Economics of Industrial Organization*, Shepherd defines effective competition as "requiring at least five strong competitors, with none holding dominance and entry conditions reasonably free." See William C. Shepherd, *The Economics of Industrial Organization*, Prentice Hall, 1997, p. 76.

⁸ Chessler, p. 7

Although the Act does not specifically define competition, it provides guidance in determining where competition is sufficient to allow the FCC (and by extension state commissions) to forebear from regulation.

Section 10 of the Act allows the Commission to forebear from regulation if it

Determines that (1) enforcement of [a] regulation or provision [of the Act] is not necessary to ensure that [a company's] charges, practices, classifications, or regulations . . . are just and reasonable . . . (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.⁹

In making this determination, the FCC

Shall consider whether forbearance . . . will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.¹⁰

The Act does not specify the number of competitors necessary to define a wireline market as competitive. In the context of opening the local exchange to competition, it provides a "competitive checklist" in Section 271 to determine whether the market is open enough for one subset of companies, the regional Bell operating companies ("RBOCs"), to remove restrictions on those companies dating from the break-up of the old Bell system. The competitive checklist allowed the RBOCs to petition the states and the FCC for permission to enter the long distance market once competition for local service had been achieved. The checklist focuses on ensuring that the local market is "irreversibly open" for competition and that it provides a realistic opportunity for competitors to enter the local exchange market and provide service. These standards and questions are similar to those that underlie current state reviews of local competition.¹¹

The Act provides somewhat clearer direction for identifying whether there is "effective competition" in the wireless market. Section 332 requires the FCC to identify the number of competitors for mobile services and analyze whether there is effective competition, whether any competitor is dominant, and whether additional competitors might enhance competition. The FCC issued its 16th annual report on the effectiveness of competition in the wireless market in March, 2013. As in previous years, the 2013 report does not reach a conclusion on whether

⁹ 47 U.S.C 160(a)

¹⁰ Id. (c)

¹¹ All of the ILECs had received permission to enter the long distance markets by the middle of 2000.

wireless markets are effectively competitive, but "focuses on presenting the best data available on competition throughout this sector of the economy."¹²

The idea that competition may reduce the need for regulation also appears in the FCC's 1995 Order reclassifying AT&T as "non-dominant" in the interstate (e.g., long distance) market. In that order, the FCC found that enough competition existed to reduce AT&T's power to control prices and influence the market, rendering it non-dominant for the purposes of regulation.

Section 61.3(0) of our regulations states only that a dominant carrier is . . . "a carrier found by the Commission to have market power (i.e., the power to control prices)." We believe, in light of the evidence in this case and the state of competition in today's interstate, domestic, interexchange telecommunications market, we should assess whether AT&T has market power by considering whether AT&T has the ability to control price with respect to the overall relevant market. " AT&T does not have the ability to control prices in the overall interstate, domestic, interexchange market. The record indicates that, to the extent AT&T has the ability to control prices at all, it is only with respect to specific service segments that are either *de minimis* to the overall interstate, domestic interexchange market, or are exposed to increased competition so as not to materially affect the overall market.¹³

C. Product substitution

As technology has increased the number of products available to consumers, discussions about competition have begun to focus more on product substitution – whether the availability of substantially similar products means a market is competitive – than on the number of discrete competitors. In traditional economic theory, one product may substitute for another if a consumer sees the second product as equivalent to the first and thus a viable substitute in response to changes in pricing and/or availability. Products do not need to be identical to substitute for each other; consumers simply must view them as interchangeable enough to be useable for the same purpose.

The best evidence of whether products can substitute for one another is actual consumer behavior. The FCC's 2012 Local Competition Report shows that the telecommunications market has continued to shift from traditional wireline switched voice service to voice over internet protocol (VoIP) and wireless services.

¹² 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 Mobile Wireless, Including Commercial Mobile Services, WT Docket 11-86, March 21, 2013, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-34A1.pdf.

¹³ Motion of AT&T to be Reclassified as a Non-Dominant Carrier, FCC Mimeo 95-427 (released October 23, 1995), available at http://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1995/fcc95427.txt.

In December 2012, there were 96 million end-user switched access lines in service, 42 million interconnected VoIP subscriptions, and 305 million mobile subscriptions in the United States, or 443 million retail local telephone service connections in total.¹⁴

The FCC report also shows that since 2008, interconnected VoIP users have increased at a compound annual growth rate of 17%, and mobile telephony subscriptions increased at a compound annual growth rate of about 4%. At the same time, retail switched access lines (i.e., traditional TDM voice lines) declined at about 9% a year for each year reviewed, suggesting that consumers now view these products as equivalent or nearly so.¹⁵

This change has also been recognized on the state level. As the 2011 Texas Competition Report points out, competition has increased across the states but changed from the wireline competition initially envisioned by the Act to

intermodal competition among companies using different types of telecommunication facilities rather than competition between telephone companies using traditional wireline-based technology. The new telecommunications arena primarily features competition between ILECs and competitors that deploy different types of facilities, such as cable companies and wireless companies. In addition, non-facilities-based companies, such as Vonage and Skype have gained customers. CLECs remain a part of the landscape, but with a diminishing market share.¹⁶

The questions of carrier dominance and product substitution are central to the ways in which the individual states evaluate competition for the purpose of reducing oversight. We discuss the criteria the states use in Section III.

III. State processes for defining competitive markets

Some states (such as Massachusetts) developed processes and standards for assessing competition in the early 1990s, but the 1996 Act created a national framework for similar reviews related to local exchange competition. Section 271 of the 1996 Act placed the initial determination of the level of competition in local exchange markets for RBOCs in the hands of

¹⁴ FCC Industry Analysis and Competition Division, Wireline Competition Bureau, Local Telephone Competition: As of December 31, 2012, (published November 2013), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1126/DOC-324413A1.pdf.

¹⁵ Id.

¹⁶ Public Utility Commission of Texas, 2011 Scope of Competition in Telecommunications Markets in Texas, January, 2012, available at https://www.puc.texas.gov/industry/communications/reports/scope/2011/2011scope_tele.pdf.

the states. Once a state determined that a market was "irreversibly open" (and the Department of Justice and the FCC concurred), the RBOC was free to offer long distance service and to compete with the new entrants for local exchange service. As local competition threatened to reduce their market share with customers choosing new entrants, the incumbents responded to the competitive threat by seeking rate deregulation and the removal of other "regulatory impediments" to competition. The decision to declare a market open to the extent that rate regulation was no longer necessary required the states to provide a framework for assessing effective competition. The states used these frameworks to examine their markets to determine whether there was indeed enough competition to reduce or even eliminate regulation.

As NRRI's 1996 paper on workable competition points out, once the market was opened,"

regulatory authorities, commissions, courts, and legislatures [would] have to make decisions with respect to the appropriate regulatory treatment of various telecommunications markets and services . . . [including determining] an appropriate mix of regulatory policies for the market in question: price regulation, quality regulation, customer protections, or the abstention from any or all of the above.¹⁷

The need for these decisions is even more pronounced today as wireline providers and other competitors continue to advocate for the removal of regulatory requirements through legislation and commission action. With customers increasingly choosing wireless and cable-based alternatives for their home phone service, some have begun to question the traditional rationale for commission regulation of communications. As Verizon pointed out in its 2006 testimony requesting alternative regulation in Rhode Island,

Regulation exists to replicate, to the extent possible, the effects of a competitive market. As a result, less regulation is needed where competitive forces are sufficient to discipline firms to produce products and services customers want at reasonable prices.¹⁸

The states bear the ultimate responsibility for ensuring that their citizens receive quality service at affordable prices and so must decide not only when competition is sufficient to reduce regulation but also whether their efforts have been successful.¹⁹ This section of the paper explores the criteria used by individual states to determine whether competition is sufficient to reduce (or in some cases eliminate altogether) regulation. Understanding the methods individual

¹⁷ Op. cit., Chessler

¹⁸ Testimony of Paul Vasington, State Of Rhode Island And Providence Plantations Public Utilities Commission, Docket No. 3692, , In Re: Verizon-Rhode Island's Successor Alternative Regulation Plan (Order issued March 17, 2006)

¹⁹ In some states, state statutes add the requirement for the commission to evaluate competition on an on-going basis and consider the re-imposition of some regulation if necessary to protect customers.

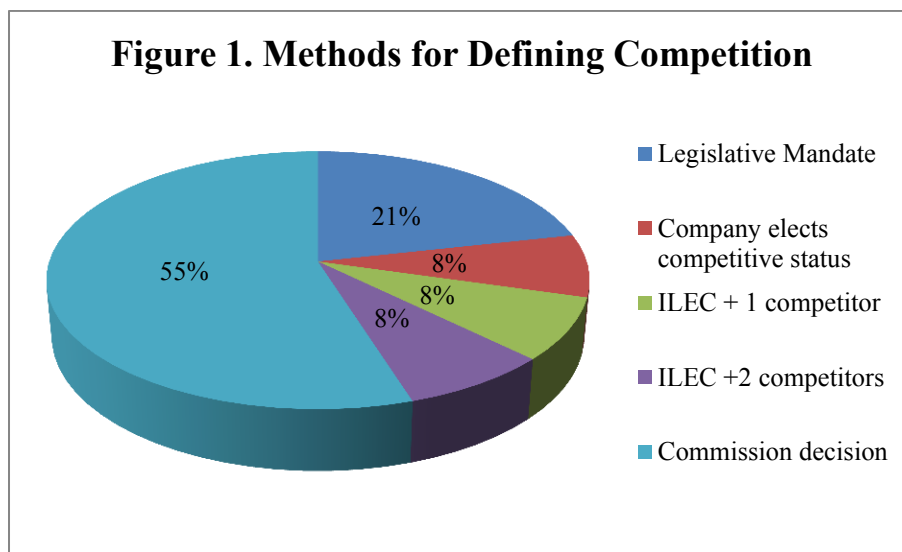
states use to evaluate the level of competition is a key part of ensuring that customers continue to receive adequate and affordable service even as regulation is reduced in favor of competition.

A. Identifying competitive areas

As we noted in Section II, the states have traditionally examined the level of competition in telecommunications on a market by market, company by company basis using formal rulemakings and adversarial proceedings. Beginning in 2006, legislation reducing or eliminating commission oversight in competitive areas changed this methodology in nearly 50% of the states. Today, the methods the states use to determine whether there is effective competition in telecommunications may be divided into four categories:

- Legislative mandate
- Carrier self-nomination ("election")
- Finite tests (i.e., the number of alternative carriers in the market)
- Effective competition rulemakings

Figure 1 provides a breakdown of the states by the method they use to determine whether markets are competitive.²⁰ We discuss this information in more detail in the following paragraphs. Details by state by method appear in Appendix A, B, C, and D.



²⁰ Some states use more than one method to determine whether there is sufficient competition to declare a company, market, or product category competitive. For example, state legislation may mandate that all urban areas are competitive but use a different method to determine whether there is competition in rural areas. For ease of reference, we categorize the "combined" states here based on the proportion of customers affected by these decisions.

B. The legislative mandate

As we noted in NRRI's 2013 review of state telecommunications regulation, by June 2013, twelve states had passed legislation mandating that the market for telecommunications services was competitive, either on a carrier level (i.e., all carriers are competitive) or on a product basis (e.g., all services are competitive except basic local exchange service).²¹ The states defining competition in this way are Alabama, Florida, Hawaii²², Illinois, Indiana, Maine, Michigan, Missouri, New Hampshire, North Dakota, and Wisconsin. These states represent 22% of the country, a number that may grow should additional legislation pass in 2014.²³

In the "legislative mandate" states, markets are designated as competitive by definition, rather than investigation. No assessment of actual availability, usability, or reliability is required. For states in this category, legislation has generally reduced or eliminated traditional commission oversight of pricing, the requirement for local tariffs, and other traditional regulatory functions for the majority of services, but has not necessarily eliminated universal service obligations, oversight of basic service, or carrier of last resort requirements. While the legislature designates all carriers in the legislative mandate category as competitive, some states provide exemptions to the rule that retain oversight of basic local service (BLS) and carrier of last resort obligations, at least in certain locations.

Table 2. The Legislative Mandate	
Legislation Designates All Providers Competitive	Alabama, Florida, Hawaii, Illinois, Indiana, Maine, ¹ Michigan, Missouri, New Hampshire, North Dakota, Wisconsin
¹ Maine retains oversight of COLRs	

1. All services are competitive; BLS and COLR requirements removed

Nine states (Alabama, Florida, Illinois, Indiana, Michigan, Missouri, Nevada, North Dakota, and Wisconsin) define all services and carriers as competitive, without regard to location or the availability of substitutable products. These states rely solely on competition to discipline the market and protect consumers. They no longer require carriers to provide basic local service

²¹ Lichtenberg, Sherry (2013), Telecommunications Deregulation: Updating the Scorecard for 2013, Report No. 13-05, National Regulatory Research Institute. For ease of discussion, the District of Columbia is included in the count of states rather than listed separately.

²² Legislation in Hawaii defines the intrastate telecommunications market as "fully price competitive," but does not speak to purely local exchange service. We include it here, because the legislation mandates competition by definition. See Hawaii Statutes, Ch 0261 §269-16.85, available at http://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0269/HRS_0269-0016_0085.htm.

²³ This paper discusses competition in the voice services market only. It does not address the issue of commission oversight of IP-enabled services.

or meet COLR obligations because legislation itself asserts that there are sufficient alternate suppliers to ensure the universal availability of competing services.

Nevada conditions its definition of a competitive supplier on the size of the company. Nevada's 2013 legislation also removes BLS and COLR requirements in the territories served by large carriers.

Any [large] telecommunication provider operating within this State is a competitive supplier.²⁴

Small providers may also be deemed competitive, based on a commission investigation and order.

A small-scale provider of last resort is not a competitive supplier unless the small-scale provider of last resort is authorized by the Commission to be regulated as a competitive supplier.²⁵

Acknowledging that circumstance may change, at least one of the legislative mandate states, Alabama, provides a backstop for customers who find that no service is available at all. Alabama HB 169 relieves carriers of their COLR obligations upon request but also provides that customers who cannot obtain any type of service may petition to require the incumbent or another carrier identified by the commission to provide it.

If the premises of a permanent residence in existence on the effective date of the act . . . is within an [ILEC's] local exchange franchise and the residence is unable to receive voice service from any provider through any voice technology, the owner . . . or a tenant may file a request for service with the commission. If the commission determines that . . . no voice service is available to the premises . . . the commission may . . . order the [ILEC] to provide voice service . . . Alternatively, the commission may conduct a competitive procurement process to identify a willing provider. In either case, the carrier . . . may utilize any technology or service arrangement to provide voice service.²⁶

While the commission may order the ILEC to provide service or seek another company to do so, the carrier may use any technology provide service, including wireless and satellite.

²⁴ Nevada Bill 486, 6/2/13, available at <http://legiscan.com/NV/text/AB486/id/803480/Nevada-2013-AB486-Introduced.pdf>.

²⁵ Op. Ct. Nevada

²⁶ Alabama HB 169, available at <http://e-lobbyist.com/gaits/text/622219>.

2. All services are competitive, but BLS and COLR requirements are retained

Legislation in four states, Hawaii²⁷, Maine, Missouri, and New Hampshire, declared all carriers and services competitive with the exception of basic local exchange services. These services remain under Commission jurisdiction.

Maine's 2012 telecommunications act defined all communications providers and services as competitive but continued the requirement that the ILEC provide service to all locations on request. Maine's COLRs must also provide service that works during power outages unless the commission rules otherwise after an adjudicatory proceeding.

An entity that was an incumbent local exchange carrier as of January 1, 2012 shall provide provider of last resort service within its service area. The commission, in an adjudicatory proceeding, may relieve a service provider of the requirement that it have the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current.²⁸

Legislation in Missouri also designates all carriers as competitive but retains COLR obligations throughout the state with the exception of St. Louis country, the city of St. Louis, and Kansas City. These obligations may be withdrawn after an investigation into the level of competition and the availability of alternative service in each area where the COLR wishes to be relieved of the requirement.²⁹

New Hampshire's definition of competitive carriers is similar to Nevada's and based on the number of customers a company serves. ILECs serving 25,000 customers or more are automatically deemed competitive. ILECs serving fewer than 25,000 customers may choose to be deemed "excepted" carriers by notifying the commission.³⁰

²⁷ Hawaii's statute focuses on intralata services, but also speaks to basic local service and COLR requirements. We place it in this group for that reason.

²⁸ Maine, An Act to Reform Telecommunications Regulation, 4/4/12, available at http://www.mainelegislature.org/legis/bills/bills_125th/chappdfs/PUBLIC623.pdf.

²⁹ The states that continue to require the ILEC to provide BLS view it as specific product different from the local service component of product bundles.

³⁰ New Hampshire SB 48, implemented 8/10/12, available at <http://www.gencourt.state.nh.us/legislation/2012/SB0048.pdf>.

C. Carriers elect competitive status

Four states, Arkansas, North Carolina, and Tennessee allow carriers to "elect" to be treated as competitive providers rather than as public utilities. To be recognized as a competitive supplier in the competitive election states, the incumbent provider notifies the state commission that it has chosen to be regulated (or better put, not regulated) in this way. As the Tennessee Code points out,

No market regulated carrier shall be subject to the regulatory authority jurisdiction in this subdivision (h) (13) in any wire center or geographic area the carrier designates by filing notice of such designation with the regulatory authority. Such notice shall be effective immediately upon filing and not subject to regulatory authority review.³¹

The language in Arkansas and North Carolina codes is similar. Both cite competition from substitutable technologies as a reason for reducing oversight so that the incumbents may compete in areas of the state where "unregulated technologies such as wireless and voice over internet protocol greatly outnumber traditional wireline connections that remain regulated by the commission."³²

Nevada defines all "large carriers" as competitive. Smaller carriers may inform the commission of their desire to be treated as competitive suppliers. As in the other states in this category, the Nevada statute focuses on the availability of substitutable services, including wireless.³³

In addition, to removing quality of service and other regulatory requirements, the North Carolina and Nevada statutes allow carriers that elect competitive status to drop their COLR responsibilities.

³¹ Tenn. Code Ann. § 65-4-101 and Section 65-5-109(n)(13), available at <http://www.lexisnexis.com/hottopics/tncode/>.

³² Arkansas Act 594, available at <http://www.arkleg.state.ar.us/assembly/2011/2011R/Acts/Act594.pdf>.

³³ Nevada Bill AB-486, available at <http://legiscan.com/NV/text/AB486/id/803480/Nevada-2013-AB486-Introduced.pdf>.

Table 3, below, shows the states that have adopted the carrier election method for reducing or eliminating regulation based on competition.

Table 3. Carrier Election	
Carrier Elects Competitive Status	Arkansas, North Carolina, Nevada, Tennessee

D. The finite test

Eight states use a "finite test" based on the number of available suppliers offering substitutable products. In the finite test states, the carrier wishing to be declared competitive must submit evidence to the commission of the availability of alternate suppliers, although a formal, adjudicatory proceeding is not always required. Four of the "finite competition" states base the decision on whether the market is competitive on the presence of one competitor, while the other four require two competitors to consider the market competitive.

Idaho's definition is particularly clear.

Effective competition exists when either: (a) Actual competition from a facilities-based competitor is present for both residential and small business basic local exchange customers; or (b) There are functionally equivalent, competitively priced local services reasonably available to both residential and small business customers from a telephone corporation unaffiliated with the incumbent telephone corporation.³⁴

Wireless service, cable voice, and other interconnected VoIP products are generally considered as substitutable for wireline voice services, including basic service. In some cases, the ability to access over the top VoIP products is also included in the definition, although in this case, the availability of alternative broadband transport suppliers may require additional investigation. In addition to the number and types of alternate service available, some states define competition on a location by location basis, either by wire center or metropolitan statistical area (MSA). In all cases, the substitutable products must be provided by an unaffiliated carrier (i.e., a carrier that is not owned wholly or in part by the ILEC.)

We discuss the finite test in the following paragraphs. A detailed summary of the ways in which specific states apply the finite test appears in Appendix C.

³⁴ Idaho Code, Section 62-606, effective 7/1/11, available at <http://www.legislature.idaho.gov/legislation/2011/S1156.pdf>.

Table 4. Finite Competition Test	
Finite Competition Test	
ILEC+1	Delaware, Idaho, South Carolina, ¹ South Dakota
ILEC+2	Kansas, Mississippi, ² Ohio, Texas
¹ ILEC + 1 alternate wireline carrier or 2 wireless carriers	
² ILEC + 2 alternate carriers or a reduction in access lines or minutes over 2 consecutive years	

1. Incumbent plus one unaffiliated competitor

Four states, Delaware, Idaho, South Carolina, and South Dakota define a market as competitive if one unaffiliated competitor to the ILEC is providing a substitute for local exchange service.

Delaware requires the alternate provider to be "present and viable," and to offer service in the relevant geographic area.³⁵ Delaware customers may challenge the classification of a location as competitive by bringing the dispute to the Secretary of the Department of Technology. A service will be deemed competitive if it

Provides the ability to transmit and receive voice communications, including E-911 communications [and] is available from an alternative provider of telephone service at the location.³⁶

Delaware's deregulation legislation became effective in late 2013; there have been no challenges to the competitive designation to date.

South Carolina requires the incumbent to face competition from either one wireline carrier or two wireless carriers for the market to be deemed competitive. South Carolina charges the Office of Regulatory Staff (ORS) with reporting on the status of local telephone competition yearly.³⁷

³⁵ Delaware Code Subchapter VII-A, Title 26 available at <http://legis.delaware.gov/LIS/LIS147.nsf/db0bad0e2af0bf31852568a5005f0f58/e660bd35adb6f7385257b6b0077bb47?OpenDocument>.

³⁶ Id. Title 26 §706

³⁷ SC Statutes Section 58-9-576, available at <http://www.scstatehouse.gov/code/title58.php>.

South Dakota defines the competitive market by service. A service is considered competitive if an alternate, substitutable service, including wireless, is available to 50% of subscribers. South Dakota Statute 49-31-1.3 further clarifies the definition of competition by defining a non-competitive service as a "monopoly service for which no competition exists or the regulation of which is necessary to insure affordable local exchange service."³⁸

Idaho also requires the presence of a single unaffiliated carrier in order to demonstrate that a market is competitive. The competitive carrier may serve either residential or business customers and may offer service using any technology, including wireless. Service must be functionally equivalent to that provided by the incumbent supplier and "comparably priced."³⁹

2. Incumbent plus two unaffiliated carriers

Four states, Kansas, Mississippi, Ohio, and Texas, consider a market competitive when there are two unaffiliated carriers in addition to the incumbent.⁴⁰ We discuss the ways in which these states apply the finite test in the following paragraphs.

Texas uses a combination of the legislative mandate and the finite competition test to determine where competition is sufficient to eliminate regulation, including COLR requirements. Texas applies the finite competition test to markets based on population. Large markets, those with a population of greater than 100,000, are automatically deemed competitive after a request to the commission. The ILEC may petition for competitive status and deregulation in markets with populations between 30,000 and 100,000 if there are "at least two competitors operating in all or part of the market."⁴¹

Texas defines the types of competitors necessary for a grant of effective competition in specific terms. Competitors must be

³⁸ South Dakota Statute 49-31-1.3, available at <http://legis.sd.gov/Statutes/DisplayStatute.aspx?Type=Statute&Statute=49>.

³⁹ Idaho Code Section 62-606, available at <http://www.legislature.idaho.gov/legislation/2011/S1156.pdf>.

⁴⁰ Alaska deems a market as competitive when there are multiple suppliers but requires the incumbent to "petition" for changed status. We therefore consider them in the commission decision section of this discussion. Legislation pending in Massachusetts and Pennsylvania would add it to this list, bringing the total number of states using the finite test to 10. See MA H2930, available at <https://malegislature.gov/Bills/188/House/H2930>. See also PA HB 1608, available at <http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2013&sInd=0&body=H&type=B&bn=1608>.

⁴¹ Texas Utility Code Annotated, §65.002, available at <http://codes.lp.findlaw.com/txstatutes/UT/2/C/65/A/65.002>.

(A) unaffiliated with the Incumbent Local Exchange Company and (B) provide voice communications service without regard to the delivery technology, including (i) Internet Protocol or a successor protocol; (ii) satellite; or (iii) a technology used by a wireless provider or a commercial mobile service provider.⁴²

Carriers deemed competitive are no longer required to serve as carriers of last resort in their markets.

Kansas uses a process similar to Texas in defining markets as competitive. All business services are competitive, regardless of market size. Exchanges with greater than 75,000 local exchange access lines are automatically considered competitive (and regulation reduced or removed). Residential exchanges with fewer than 75,000 local exchange access lines are considered competitive if two or more carriers unaffiliated with the ILEC offer service. Carriers petition the commission for status as an "electing company."⁴³ Because they serve areas considered competitive, electing carriers may also request to be relieved of their COLR requirements.

In 2012, The Mississippi legislature determined that,

In the provision of all services, other than switched access, competition or other market forces adequately protect the public interest. Therefore the commission no longer has jurisdiction over the services.⁴⁴

Mississippi uses the two carrier finite test as the primary method for determining where competition is effective enough to reduce or eliminate oversight. The finite test requires competing carriers to actually be "offering service to [the] public utility's subscribers." The legislation also allows companies to petition for reduced regulation based on line loss, using line loss statistics as a surrogate for competition. Mississippi rules specify that an ILEC may be declared competitive if it "has experienced a material reduction in access lines or minutes of use in two consecutive years."⁴⁵

⁴² Id. at §65.052 Earlier drafts of the Texas legislation required at least one provider to be certificated by the Commission and to offer both residential and business service, but this language did not survive to the final bill.

⁴³ Kansas Statutes §66-2005, available at http://kansasstatutes.lesterama.org/Chapter_66/Article_20/#66-2005.

⁴⁴ Mississippi HB 825, An Act to Amend Section 77-3-3; signed 4/19/12, available at <http://billstatus.ls.state.ms.us/2012/pdf/history/HB/HB0825.xml>.

⁴⁵ Id.

Like Mississippi, the Wyoming rules require the competing service to actually be available to 75% of the ILEC's existing customers (or 60% if the application includes both business and residential service.) The Wyoming rules require that at least one of the competing carriers provide landline service (including cable voice service).⁴⁶

Finally, in Ohio, the competing companies must offer basic telephone service or the equivalent using any technology, including interconnected VoIP.⁴⁷

E. Commission review and decision

Twenty-four states use the legislative mandate, carrier election, or the finite test to determine whether markets are effectively competitive. The other 27 states refer the decision on market competitiveness to the state commissions, which evaluate the level of competition in the state in order to determine if and where effective competition will be sufficient to discipline the market if oversight is reduced or withdrawn.⁴⁸ Of the 27 commission review states, some have established specific criteria for determining whether a carrier or a market is competitive. Other states examine the number and size of competitors in detail to reach a decision; while a third category grants the carrier certain benefits (e.g., limited pricing oversight, no quality of service standards) to level the playing field with their unregulated competitors.⁴⁹

A fourth category of states declares specific markets open or reduces regulation on specific products or services based on competition and the availability of comparable offerings. For example, New Jersey relieved Verizon of many of its regulatory requirements for bundled services in 2006 but retained oversight of single line, standalone basic telecommunications service.⁵⁰

⁴⁶ Wyoming Statutes, Section 37-15-202; available at <http://legisweb.state.wy.us/LSOWEB/statutesdownload.aspx>.

⁴⁷ OH SB 162, available at http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_162.

⁴⁸ This category is not meant to imply that there is no commission oversight in the other types of review; rather, we have separated out the "commission review" states, because they determine the availability of effective competition based on an adjudicatory hearing.

⁴⁹ Some of the alternate regulation plans condition reduced oversight on expanded product availability or broadband build out. For example, the Pennsylvania AFOR plan required Verizon to build out its broadband network in exchange for reduced regulation.

⁵⁰ Verizon petitioned for competitive status for its remaining services in 2012. That proceeding is on-going. See New Jersey Board of Public Utilities, In the Matter of the Board Investigation of Incumbent Local Exchange Carrier (ILEC) Services as Competitive – Phase II, Docket No. TX 11090570, February 2012.

We discuss the commission decision model for determining whether markets are competitive in the following paragraphs. Details of the commission decision states appear in Appendix D.

Table 5. Commission determination	
Commission Determination	Alaska, Arizona, California, Colorado, Connecticut, DC, Georgia, Iowa, Kentucky, Louisiana, ¹ Maryland, Massachusetts, ² Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, ³ Rhode Island, Utah, Virginia, Vermont, Washington, West Virginia, Wyoming
¹ The Louisiana commission designated all carriers competitive, effective 1/13/14	
² Legislation pending in MA (HB 2930) would move the state to the Finite category	
³ Legislation pending in PA (HB 1608) would move that state to the Finite category	

1. Standards for evaluating competition

In general, the states require carriers requesting competitive status to show that they are non-dominant, that competition exists for the services they offer, that the market is open to competitive entry, and that the determination is in the public interest. These criteria are grounded in economic theory, precedent from evaluating long distance service competition, and the market opening language of TA 96, which, as we noted earlier, allows the FCC and the states to forbear from regulation in order to increase competitive choice.

Oregon's statute outlines the issues that commissions review in determining whether competition is sufficient to ensure that market forces rather than regulation are sufficient to protect consumers.

The commission shall consider: (a) the extent to which services are available from alternative providers, (b) the extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates and under comparable terms and conditions, (c) existing economic or regulatory barriers to entry, [and] (d) any other factors deemed relevant.⁵¹

New Jersey uses a similar review process. New Jersey statutes allow carriers to petition the Board of Public Utilities ("Board") to declare specific services competitive and to reduce regulation on those services. In making their decision, the Board

⁵¹ OR Statutes 759.050 and 759.052, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors759.html.

Shall develop standards of competitive service which, at a minimum, shall include evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area.⁵²

As in other states, New Jersey conducts adjudicatory hearings to determine which services should be judged competitive and which should remain regulated. These hearings address the number and types of competitors in the market to ensure that competitors may enter the market and review the availability of substitutable products to determine whether the services offered by the competitors can substitute for the product the carrier seeks to deregulate. If the Board finds that a service is competitive, it may reduce or remove oversight entirely.

West Virginia also provides a clear definition for competition. Section 24 of the West Virginia code provides that

Evidence of ease of market entry, the presence of other competitors and the availability of like or substitute services shall be sufficient to show that a commodity or service is subject to workable competition.⁵³

Louisiana has taken an especially interesting path toward defining its carriers as competitive. Louisiana issued rules governing competition beginning in 2005. In 2009, the Commission issued General Order R-30347, which determined that the state had "vibrant competition," with multiple carriers providing service. Based on that finding, the commission began a series of proceedings to determine whether there was sufficient competition to eliminate the regulation of AT&T as an ILEC, including the requirement that it serve as a COLR and offer tariffed basic local service.⁵⁴

In 2013, AT&T petitioned the commission to lift its remaining regulatory requirements, including its COLR obligations, based on the number of competitors in the market and what it termed the significant line loss resulting from that competition. AT&T's petition pointed to the presence of 28 direct competitors, 19 of which were facilities based. After a review of the record and input from both AT&T and the other carriers operating in the state, commission staff recommended the level of competition in the state as shown by AT&T's declining share of the

⁵² New Jersey Statutes 48:2-21.19, available at <http://njlaw.rutgers.edu/cgi-bin/njstats/showsect.cgi?title=48&chapter=2§ion=21.19&actn=getsect>.

⁵³ WV Code §24-2-3c, Cessation of jurisdiction over rates for certain services subject to competition, available at <http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=24>. Interestingly, WV appears to be the only state that refers to workable competition in its statute.

⁵⁴ LA PUC General Order R-30347, 8/13/2009; PUC Docket R-31839, available at http://www.lpsc.louisiana.gov/_docs/_Utilities/8-14-09-3.pdf.

landline telecommunications market was sufficient to complete the transition from regulated company to competitive carrier, including the removal of COLR obligations.⁵⁵

2. Alternate forms of regulation

As we noted earlier, some states have moved toward classifying their markets as competitive by agreeing to alternate forms of regulation with their carriers. Minnesota's statute explains the reasoning behind these plans.

The purpose of an alternative regulation plan is to provide customers with service quality consistent with commission rules at affordable rates, facilitate the development of alternatives for customers, and provide a regulatory environment with greater flexibility.⁵⁶

In Minnesota, carriers may petition for reduced regulation by agreeing to an AFOR plan that includes the deployment of fiber and the provision of broadband services to schools and libraries. The commission will review the proposal based on

(1) the number, size, and identity of competitors providing the same or functionally equivalent service; (2) the geographic area in which competitive service is available to and being used by customers (3) the importance of the service to the public; and (4) the effect of classification of the service on the development of a competitive market.⁵⁷

The District of Columbia also uses an alternate regulation plan to reduce oversight of incumbent carriers. The DC Code provides that

Local exchange carriers will be regulated according to each LEC's respective market power in the local exchange market, and in such manner as to prohibit abuse of monopoly power and facilitate adjustments in pricing as developing competition dictates a need for market flexibility.⁵⁸

⁵⁵ Louisiana Public Service Commission Docket No R-31839 In Re: Petition for Modification of Rules and Regulations Necessary to Achieve Regulatory Parity and Modernization, 11/4/2013 The LA Order allows AT&T to relinquish its COLR obligations on a quarterly basis beginning 12/31/13 by exchange depending on line loss. COLR obligations will be completely withdrawn 12/31/15.

⁵⁶ MN Statute 237.76, available at <https://www.revisor.mn.gov/statutes/?id=237.76>.

⁵⁷ Id.

⁵⁸ 2012 District of Columbia Code; Section 34-2002, available at <http://law.justia.com/codes/district-of-columbia/2012/division-v/title-34/subtitle-v/chapter-20/section-34-2001.html>.

Maryland, Montana, Pennsylvania⁵⁹, Massachusetts, Rhode Island, and South Carolina also use AFOR plans to reduce regulation while ensuring product availability, service quality, and fair, just, and reasonable rates.

3. Re-evaluation and reclassification

Statutes in Delaware, Georgia, Nebraska, New Jersey, Oklahoma, Oregon, Virginia, and Washington recognize that competitive conditions may change and so give the state commission continuing authority to monitor the market and reclassify services if it becomes necessary. For example, the New Jersey statute gives the Board the authority to reevaluate its decision on whether a market segment is competitive and

To reclassify any telecommunications service that it has previously found to be competitive if, after notice and hearing, it determines that sufficient competition is no longer present. The board . . . shall continue to monitor the telecommunications service and, whenever the board shall find that the telecommunications service has again become sufficiently competitive, the board shall again [reduce regulation].⁶⁰

Washington state reviews competition on a company by company and exchange by exchange basis and may reclassify service "if the revocation or reclassification would protect the public interest."⁶¹ The Nebraska and Oklahoma rules are similar, allowing the commission to reassess the status of competition, on its own motion.

Even in those states that do not specifically require an on-going study of the success of competition, a number of state commissions continue to monitor the number of competitors in the market and the choices available to citizens in their states.

Illinois declared all markets competitive in 2010. Illinois Public Act 096-097 anticipated a need to review the status of competition after reducing regulation. To evaluate the success of this declaration, in January, 2014, the Illinois Commerce Commission (ICC) has requested that all carriers, including interconnected VoIP carriers to provide data on the number of lines in

⁵⁹ PA HB 1608, currently pending in the PA legislature, would discontinue the state's existing AFOR plan and define incumbent carriers as competitive by location if there are 2 or more alternative suppliers. Carriers that agreed to deploy broadband under the state's current AFOR rules may not be deregulated until 1/1/16.

⁶⁰ New Jersey Statutes 48:2-21.19, available at <http://njlaw.rutgers.edu/cgi-bin/njstats/showsect.cgi?title=48&chapter=2§ion=21.19&actn=getsect>.

⁶¹ Washington State Statute, RCW 80.36.320, available at <http://apps.leg.wa.gov/rcw/default.aspx?cite=80.36.320>.

service at the end of 2013 by the end of April 30, 2014. The data will be used to assess the level of telecommunications competition in the state.⁶²

The District of Columbia is also reviewing the status of competition in its jurisdiction. Commission records show that there are 175 carriers certificated to operate in the city, but not all appear to actually be providing service. The DC proceeding will determine how to collect the information necessary to "assess the state of competition in the District and whether [the commission's] conclusions regarding dominance in the local exchange market continue to be accurate."⁶³

On-going reviews of the status of competition are an important method to ensure that the market continues to remain open and that customers retain the ability to choose the providers that meet their needs.

⁶² ICC Competition Data Request, available at <https://www.icc.illinois.gov/telecomcdr/>.

⁶³ DC Public Service Commission, Formal Case No. 1112, In the matter of Amendment of the Commission's Rules Regarding Regulation of Local Exchange Carriers, available at http://www.dcpsc.org/edocket/docketsheets.asp?cbofctype=FC&CaseNumber=1112&ItemNumber=&orderno=&PartyFiling=&FilingType=&yr_filing=&Keywords=&FromDate=&ToDate=&toggle_text=Full+Text&show_result=Y&hdn_orderNumber=&hdn_chk_whole_search=&hdn_AssesmentType.

IV. State Proceedings

As David L. Kaserman and John W. Mayo, point out in their study of “Competition in the Long-Distance Market,”

The first step in any analysis of competition in a market is to properly define the product and geographic dimensions of the relevant market. If a market is defined either too broadly or too narrowly, spurious conclusions may arise.⁶⁴

Once it has defined the market, the state commission must examine the competitors, the products they offer, and consumer behavior to determine whether competition is not only actively present, but whether it is sufficiently strong to ensure consumer choice and product quality.

In this section we discuss the ways in which Washington and Colorado have used this definition to examine the competitiveness of their markets and carriers.

A. Washington

In 1984, shortly after the breakup of AT&T, the Washington legislature examined the state's changing telecommunications landscape in order to develop a baseline for defining and evaluating competition. In 1985, the legislature implemented the recommendations of this study by passing the Regulatory Flexibility Act (Chapter 450), which placed the oversight of competitive telecommunications in the hands of the Washington Utilities and Transportation Commission (UTC) and provided a methodology for determining when competition could become sufficient to relax regulation.⁶⁵ The legislation explicitly defined the state's policy of ensuring universal service, protecting the affordability and availability of telecommunications services, and provided the flexibility to regulate companies based on the level of competition they faced. The Act instructed the UTC to evaluate companies seeking competitive status based on the specific needs of the customers it serves. It also provides the commission with the ability to revoke the decision to reduce regulation if the situation changes.

Washington uses both alternate form of regulation (AFOR) plans and competitive assessment to determine whether and when to reduce oversight of its carriers. Carriers may request either form of oversight.

The AFOR statute (RCW 80.36.135), allows a carrier to agree to specific terms and conditions in exchange for reduced regulation. Qwest, the state's largest ILEC was regulated under an AFOR from 2007 to 2013. Its successor, CenturyLink, was granted a continuation of

⁶⁴ David L. Kaserman and John W. Mayo, “Competition in the Long-Distance Market,” *Handbook of Telecommunications Economics*, Vol.1, Martin E. Cave, Sumit K. Majumdar, and Ingo Vogelsang, eds., (Elsevier: Amsterdam, 2002)

⁶⁵ Washington Laws 1985, Chapter 450, 1985 Telecommunications Regulation, available at <http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/1985>.

that AFOR for another 7 years in January 2014. In reviewing and granting that plan, the commission evaluated the company's status and operations and determined that the AFOR

Properly tailors regulation of the Company to the reality of today's telecommunications marketplace, with the additional understanding that the Commission will continue to ensure that both wholesale and retail consumers receive the service quality to which they are entitled.⁶⁶

Carriers that do not wish to be regulated under an AFOR may petition the commission to grant them status as competitive suppliers. Washington statutes give the commission the authority to recommend that a requesting company be declared competitive as a whole or that specific services be declared competitive. In the first instance, the commission examines the:

(a) Number and sizes of alternative providers; (b) Extent to which services are available from alternative providers in the relevant market; (c) Ability of alternative providers to make functionally equivalent or substitute services available at competitive rates, terms, and conditions; and (d) Other indicators of market power -- market share, growth in market share, ease of entry, affiliation of service providers.⁶⁷

In the second, the commission must determine whether each specific service offered by the petitioner is subject to effective competition, defined as "customers of the service have reasonably available alternatives and . . . the service is not provided to a significant captive customer base."⁶⁸

Washington uses these statutes to review competition on an on-going basis. In the following paragraphs, we discuss the way in which the commission addressed a request for competitive status from Frontier, one of the state's two ILECs.

In January 2013, Frontier filed a request for reduced regulation based on the level of competition it faced in its territory. As the commission notes in its Order granting the petition in part, the docket presented it with the opportunity

To acknowledge the realities of the 21st Century marketplace by reducing unnecessary regulation and bolstering the ability of Frontier and its competitors to

⁶⁶ Washington Utilities and Transportation Commission, Order 04, Approving Settlement Agreements and Establishing Alternate Form of Regulation for the CenturyLink Companies – Qwest Corporation, CenturyTel of Washington, CenturyTel of Interisland, CenturyTel of Cowiche, and United Telephone Company of the Northwest, Pursuant to RCW 80.36.135

⁶⁷ Id. RCW §80.36.320

⁶⁸ Id. RCW §80.36.330

provide effective competitive telecommunications services to the ultimate benefit of this state's consumers.⁶⁹

In making its decisions on whether a company and its services are competitive, the UTC uses the tools provided by the Regulatory Flexibility Act as a basis for an adjudicatory proceeding to determine whether competition is sufficient to warrant reduced regulation. In doing so, the commission examines both the wholesale and retail services the company offers in each segment of its territory in order to determine where competition exists and to what level. This granular examination provides the data the commission requires to either grant the petitioners request in whole or create a settlement agreement with the company that reduces regulation in competitive areas while continuing oversight where necessary. Washington used the latter method to reach a decision on whether to exempt Frontier from oversight of specific services in its territory.

One of the key questions in any proceeding evaluating effective competition is whether single line wired voice service, generally called basic local service (BLS) or plain old telephone service (POTS) is competitive. This question is central to the Washington review of Frontier's application, as well as to proceedings in other states including Colorado (discussed below in IV.B) and New Jersey. We discuss that decision here to provide other commissions with information they may use in similar proceedings in their states.

After studying the availability of basic local service, including wired Lifeline service, Washington commission staff (which acts as a party to adjudicatory proceedings), recommended that these two products be treated separately from other Frontier offers and judged non-competitive. Staff conditioned their recommendation for approval of Frontier's petition on maintaining tariffing and other requirements on basic local service (albeit with the flexibility to change prices within certain price cap rules). Staff grounded its recommendation in the finding that wireless, VoIP, and bundled local service is not a direct substitute for POTs.

The Commission disagreed, ruling that these services are indeed substitutes for POTs, because consumers perceive them that way. Washington consumers are dropping Frontier service in favor of these products or could do so if Frontier's pricing decisions made that change financially advantageous. Indeed, because consumers could opt for these substitute services, Frontier would not be able to raise prices on basic local service without losing additional line share. As the commission order points out,

⁶⁹ Washington Utilities and Transportation Commission, Docket UT-121994, Order 06, Final Order Approving Settlement Agreements With Conditions And Classifying Services As Competitive In The Matter Of the Petition of Frontier Communications Northwest Inc. To Be Regulated As a Competitive Telecommunications Company Pursuant To RCW 80.36.320. Washington has recently completed a similar review of CenturyLink.

To the extent possible, *consumers*, not the Commission, should determine whether other providers' services are viable alternatives to the incumbent telephone company's services. The record evidence overwhelmingly demonstrates that most consumers consider wireless, VoIP, and CLEC services, individually and in bundles, to be alternatives to Frontier's basic residential or small business services.⁷⁰

The commission did not, however, relieve Frontier of its COLR obligation, because it judged those obligations to continue to be in the public interest.⁷¹

In determining that the majority of Frontier's services in Washington are competitive, the commission underlined the need for a case by case evaluation of competition as a prelude to any decision to reduce oversight. The decision also highlights the commission's changing role from regulatory guardian to enabler of competition as the availability of substitutable services makes communications markets more competitive.

If alternative providers of telecommunications services exist and the [incumbent] Company no longer serves a significant captive customer base, we will substantially reduce historic regulation, particularly economic regulation, in favor of the disciplines of an effectively competitive marketplace. In the world as it exists today, our traditional role must devolve to one increasingly focused on preserving and promoting conditions for competition.⁷²

B. Colorado

As we noted in NRRI's 2013 examination of state telecommunications regulations, Colorado opened Docket 12R-862, *In the Matter of the Proposed Rules Regulating Telecommunications Providers, Services, and Products*, in August, 2012, to review and revise the state's telecommunications rules in order to

Bring telecommunications regulation into the modern era by guaranteeing the affordability of basic telephone service while fostering free market competition within the telecommunications industry.⁷³

⁷⁰ Docket UT-121994 at 58

⁷¹ The commission also retained Frontier's wholesale obligations as defined under Section 251/252 or the 96 Act.

⁷² *Id.* at 77

⁷³ Docket 12R-862, *Order Adopting Rules in the Matter of the Proposed Rules Regulating Telecommunications Providers, Services, and Products*, 4 Code of Colorado Regulations 723-2..

The commission also opened an informational docket, 13I-0097I, in 2013 to obtain input from carriers, wholesale providers, consumer advocates, and others on the way in which it should examine the level of competition in the state. Based on that input and its statutory responsibility to foster competition while protecting the availability of basic service, the commission opened the current docket (13M-0422T) in April 2013 to examine the status of competition in the state directly and determine in what areas of the state the incumbent provider, CenturyLink, faces effective competition. In those wire centers⁷⁴ where effective competition exists, the commission is required to reduce regulation on the incumbent to level the playing field with its competitors.⁷⁵

The Colorado commission order provides a stringent standard for designating a wire center as effectively competitive, focusing on the presence of a finite number of providers, the ability of new carriers to enter and succeed in the market, and the ability of at least "a majority of residential customers within the area to have access to multiple providers or carriers offering basic service or similar services."⁷⁶ The first phase of the Colorado proceeding reviews 56 CenturyLink wire centers. The Commission prioritized the wire centers to review based on whether they housed facilities based competitive carriers and whether CenturyLink provided basic services to residential customers in those locations. Additional wire centers will be reviewed in a second and, if necessary, third phase.

Colorado uses the finite test in part to judge whether there is effective competition in the wire centers under study. In this proceeding, the commission first defines effective competition as

The presence of the incumbent provider (CenturyLink QC) and three or more facilities-based providers serving residential consumers,⁷⁷

The commission charged the telecommunications staff with determining the number of competitors in each of those wire centers and identifying the services they offered.

Once the staff has validated the presence of competitors, the Order requires it to examine and report on the actual products available to consumers and small businesses in the market. The Order also requires commission staff to identify and examine any barriers to market entry. The presence of unaffiliated competitors actually offering substitutable services provides evidence that the market is open to competition. Substitutable products include wireline voice (including

⁷⁴ A wire center is an exchange or combination of exchanges where the incumbent carrier provides local exchange service.

⁷⁵ Docket 13M-044T, In the Matter of Commission Consideration of Effective Competition Areas and the Classification of Basic Local Exchange Service Pursuant to 4 CCR 723-1-2213.

⁷⁶ Id. at 24

⁷⁷ Id. at 25

cable voice), wireless, and VoIP. Over the top VoIP may be considered as additional evidence of competition but may not be included in the count of facilities based competitors in a wire center. A wireless service may be considered substitutable if the carrier provides service over its own facilities.

Colorado's proceeding to determine the wire centers where effective competition is sufficient to reduce regulation is still open, but initial staff testimony has recommended that each of the 56 markets studied be judged effectively competitive based on the number and type of suppliers and the relative ease of market entry.

Barriers to market entry seemed to be limited and largely economic but not exclusionary in nature. Both wireless and wire line providers offer similar services at comparable prices and terms. Staff found no evidence that CenturyLink-QC was able to affect other providers' prices and/or deter competition. Finally, Staff found that there were three or more facilities-based competitive providers identified in all wire centers.⁷⁸

Staff also found that with the exception of the cable companies, few traditional CLECs continue to serve the residential market. Although 75 CLECs are certified to provide service in Colorado, only 5 of these provide facilities-based residential service and of those, only 3 (all cable companies) have a significant number of customers. This finding is in line with other state findings that CLECs no longer focus on the residential market but, instead, have chosen to compete primarily for small business or multi-location, multi-state large business locations.

Consumer groups, including AARP have pushed back on staff's recommendations in the Colorado proceeding. These respondents are concerned that a finding of effective competition will allow CenturyLink to drop its standalone basic local service offering. The commission will address these issues as the proceeding continues.

⁷⁸ In The Matter Of Commission Consideration Of Effective Competition Areas And The Classification Of Basic Local Exchange Service Pursuant To 4 CCR 723-2-2213, Proceeding No. 13M-0422T Direct Testimony and Exhibits of Judith Swinnerton, Staff of the Colorado Public Utilities Commission.

V. Conclusions and Recommendations

This paper reviewed the methods the states use to identify and evaluate competition as a prelude to reducing or eliminating oversight of competitive carriers. These methods fall into four categories: legislative mandate, carrier election, the finite test, and formal commission review and decision. Each of these processes provides the state with the opportunity to review the status of their market(s) and determine whether it is effectively competitive. They also give the state the opportunity to work with carriers and consumers to determine whether competition is (and continues to be) successful in bringing new products to market and providing consumers with the services they need at affordable prices and with comparable availability across the state.

In the following paragraphs, we discuss ways in which the states may wish to use the best practices discussed here in making and implementing decisions on effective competition.

A. Engage in granular reviews

The more granular the review process, the more likely it is to identify not just those locations where oversight continues to be necessary but also areas where competition is already sufficient to warrant reducing regulation. A detailed review by wire center or exchange may also help the commission identify areas where competition is beginning to take hold and suggest ways to encourage its growth, either through relaxed oversight or by creating an alternate regulation plan that encourages carriers to offer products that will ensure that new products and services are available to all, including standalone, basic local service.

Many state commissions already use the processes described in our review of the Washington and Colorado proceedings to evaluate the level of competition in their states. Commissions just beginning to undertake such studies may wish to follow the example of these states by evaluating products separately to determine which may need to remain under commission jurisdiction at least until competition provides more than a single wireline and wireless competitor for consumers.

In areas where geography or other factors limit the availability of competitive options, the granular review process may also identify areas where non-traditional products have penetration levels high enough to suggest that they are – or may become – substitutable. This type of evaluation has the potential for becoming more important as the network transitions to internet protocol enabled services.

B. Consider business and residential markets separately

After the passage of the 1996 Act, competition initially began in the residential sector, as long distance providers such as MCI, Sprint and AT&T the CLEC began to offer local service via the ILECs' facilities using the combination of unbundled elements then called UNE-P. Those and other primarily residential competitors left the market or changed strategy when the

Triennial Review Remand Order (TRRO) required carriers to offer purely facilities based service or resale by removing switching as a UNE.⁷⁹

Today, the majority of non-cable competitive local exchange carriers (CLECs) focus primarily on the business market, where economies of scale and location make services more profitable.

As the CLECs have begun to focus on business services, competition for residential services is now primarily offered by the ILEC, cable companies, and wireless providers. This change in strategy has not been accompanied by an equivalent change in the state rules governing the investigation of effective competition. Thus, in many states, the decision on the number of carriers in the market or the availability of competing services rests in the combined market, potentially reducing the reliability of this decision. Where possible, states may want to correct for this change in strategy by assessing residential and business service availability separately in order to determine whether effective competition exists in both market segments. Colorado's current study of effective competition follows this pattern.

C. Consider the availability of alternative broadband providers, not just the number of competing voice services

Counting the number of alternative voice providers, including VoIP providers, serving an area may provide only part of the competitive picture. Although end user customers are increasingly purchasing VoIP services rather than traditional switched voice offering, they can obtain these services in two ways -- either from suppliers that provide their own managed voice connection to the internet (for example, the ILEC or a cable provider), or from an over the top carrier (for example, Skype or Vonage) that uses another provider's broadband transport network. In the latter case, the customer must purchase both a broadband connection and the voice service but may have only limited suppliers for the broadband connection. For this reason, state regulators and legislators should consider both the availability of end-user services and the transport these services ride on in determining whether an area is effectively competitive. These reviews should examine not only the number of suppliers providing alternatives to the service provided by the incumbent carrier, but whether the customer has a choice of broadband suppliers to provide the high speed data path necessary to use an over the top service like Skype or Vonage.

Regulators and legislators defining effective competition based in whole or in large part on over the top VoIP carriers thus may need to pose the question of the number of competitive suppliers separately for the end-user service level and the transport level before reaching the

⁷⁹ MCI was purchased by Verizon and ceased offering residential service in areas where Verizon was the incumbent carrier. Similarly, AT&T became part of SBC, now AT&T, and also withdrew from much of the residential market. See, FCC, In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338 ORDER ON REMAND, 12/15/2004, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-290A1.pdf.

conclusion that consumers have sufficient options for the market to be designated as effectively competitive. This will be particularly true in areas where there may be only two wired broadband suppliers or where only one "wired" broadband carrier provides a connection to the customer's premise and the alternative supplier provides service via a wireless or satellite connection.

This question will become increasingly important as the market continues to transition from traditional wireline service to IP-enabled products and existing suppliers consider whether to continue to provide service over their own wired facilities or move to other transport methods.

D. Periodically re-evaluate the level of actual competition

As testimony in the Colorado proceeding points out, the number of customers moving from traditional wireline to wireless and VoIP products suggests that there are few remaining barriers to competitors entering and leaving the local exchange market. The ability for new competitors to enter the market easily has resulted in on-going changes to the number of actual competitors doing business in a state.

The change in the number of competitors across the country is borne out by reviews of competitors in Michigan and the District of Columbia, which show a discrepancy between the numbers of competitors registered to offer service and those actually doing so. For example, Michigan's June 2013 report on the status of local competition notes that although 173 CLECs are registered to provide service in the state, only 100 are currently doing so, and the majority of those are serving business customers.⁸⁰ The District of Columbia PSC is also concerned about the discrepancy between the number of CLECs certificated to do business in the city and those actually doing so and is currently reviewing the question of how to determine whether CLECs are actually providing service in the city.

While some state statutes, like Delaware's, require that there be "at least one unaffiliated service provider which is present and viable," to meet the finite test of local competition, others simply assume that the alternate carriers registered with the state are providing service.⁸¹ To ensure that there is actual competition in each of the areas they are considering designating as competitive; states may consider recommending that new or amended legislation specifically requires that competitors are actively providing service in the state, particularly on a wire center by wire center basis.

This question has become particularly important in places like Mantoloking, New Jersey, a barrier island where wireline telephone service was destroyed as a result of Hurricane Sandy. Because Verizon's physical infrastructure was destroyed by the storm, the company has

⁸⁰ Michigan Public Service Commission, the Status of Telecommunications Competition in Michigan, June 2013. This is the state's final report on the level of competition.

⁸¹ DE HB96, available at <http://legis.delaware.gov/LIS/LIS147.nsf/db0bad0e2af0bf31852568a50>.

petitioned the FCC for permission to withdraw copper-based service in the wire center and replace it with a fixed wireless product. The petition cites the availability of a single wireline competitor, the cable company, and multiple wireless carriers as proof that effective competition makes the withdrawal of wireline service acceptable.⁸²

Because competitors may enter and leave the market easily, where possible states may monitor changes in the availability of substitutable products in order to determine whether markets continue to be workably competitive, particularly on the residential side. This process may be particularly effective in states like Nebraska, where

The commission may, on its own motion at any time after a determination as to whether local competition exists, reexamine and re-determine the [decision] after notice and a hearing on the issue.⁸³

By reviewing the level of competition on an on-going basis, states can ensure that the regulations they develop actually meet the need for regulation.

E. Consumer choice is the best indicator of the effective competition

Consumer behavior is the ultimate indicator of the level of competition in a market. If consumers choose to move from traditional wireline voice products to wireless and IP-enabled services, they do so because they judge these products to provide adequate (or even premium) substitutes for traditional voice service. As Florida's 2013 competition report points out,

The continued growth of interconnected VoIP and wireless-only households and the ongoing erosion of landline access lines, [suggests that the] network reliability of non-ILEC providers appears to be sufficient [for consumers]. The number and variety of competitive choices among all types of service providers suggest that competition is having a positive impact on the telecommunications market.⁸⁴

For this reason, states should look to their own citizens to determine where competition is sufficient to reduce regulation while retaining universally available and affordable service. By doing so, they can ensure that markets remain open and consumers have multiple options for obtaining the services they need.

⁸² Application of Verizon New York Inc. and Verizon New Jersey Inc. for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended to Discontinue the Provision of Service, WC Docket No. 13-150

⁸³ NE Statutes § 86-143 and 86-144, available at <http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB257.pdf>.

⁸⁴ Florida Public Service Commission, Department of Telecommunications, Report on the Status of Competition on the Telecommunications Industry, as of December 31, 2012.

This paper has reviewed the processes that the states use to designate carriers, products, and jurisdictions as effectively competitive for the purpose of reducing or eliminating state oversight. As the IP transition moves forward and customers continue to move among carriers, state commissions can use the principles provided here to determine the best way to ensure effective competition in their jurisdictions. As the UTC notes in the Frontier decision,

Telecommunications markets are best served by public policies that are, to the maximum extent possible, technology and industry-neutral and that allow market forces to operate freely without unnecessary regulatory interference and that focus on core functions such as protecting consumers and promoting competition among diverse providers of communication services.⁸⁵

⁸⁵ Washington Utilities and Transportation Commission, Docket UT-121994, Order 06, Final Order Approving Settlement Agreements With Conditions And Classifying Services As Competitive In The Matter Of the Petition of Frontier Communications Northwest Inc. To Be Regulated As a Competitive Telecommunications Company Pursuant To RCW 80.36.320

Bibliography

Alabama House Bill 169, effective 7/1/12, available at <http://e-lobbyist.com/gaits/text/622219>

Arkansas Act 594, available at
<http://www.arkleg.state.ar.us/assembly/2011/2011R/Acts/Act594.pdf>

AT&T, Motion of AT&T to be Reclassified as a Non-Dominant Carrier, FCC Mimeo 95-427 (released October 23, 1995), available at
http://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1995/fcc95427.txt

Cherry, Barbara A. (May 19, 2013), Ex parte filing, Technology Transitions Policy Task Force, GN Docket 13-5, Federal Communications Commission.

Chessler, David, Ph.D., Determining When Competition Is Workable: A Handbook for State Commissions Making Assessments Required by the Telecommunications Act of 1996, NRRI, July, 1996, available at <http://www.ipu.msu.edu/library/pdfs/nrri/Chessler-Workable-Competition-96-19-July-96.pdf>

Delaware Code Subchapter VII-A, Title 26 available at
<http://legis.delaware.gov/LIS/LIS147.nsf/db0bad0e2af0bf31852568a5005f0f58/e660bd35adb6f7385257b6b0077bb47?OpenDocument>

District of Columbia Public Service Commission, Formal Case No. 1112, In the matter of Amendment of the Commission's Rules Regarding Regulation of Local Exchange Carriers, available at
http://www.dcpssc.org/edocket/docketsheets.asp?cbofctype=FC&CaseNumber=1112&ItemNumber=&orderno=&PartyFiling=&FilingType=&yr_filing=&Keywords=&FromDate=&ToDate=&toggle_text=Full+Text&show_result=Y&hdn_orderNumber=&hdn_chk_w hole_search=&hdn_AssesmentType

Federal Communications Commission, 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 Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 11-186, March 19, 2013, available at
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-34A1.pdf

Federal Communications Commission, Industry Analysis and Competition Division, Wireline Competition Bureau, Local Telephone Competition: As of December 31, 2012, (published November 2013), available at
http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1126/DOC-324413A1.pdf

Federal Communications Commission, In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange

- Carriers, WC Docket No. 04-313, CC Docket No. 01-338 ORDER ON REMAND, 12/15/2004, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-290A1.pdf
- Florida Public Service Commission, Telecommunications Division, Report on the Status of Competition in the Telecommunications Industry, as of December 31, 2012
<http://www.floridapsc.com/publications/pdf/telecomm/20130722MasterComp.pdf>
- Hawaii Statutes, Ch 0261 §269-16.85, available at
http://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0269/HRS_0269-0016_0085.htm
- Hempling, Scott, Preside or Lead: The Attributes and Actions of Effective Regulators, NRRI, 2010.
- Idaho Code, Section 62-606, effective 7/1/2011, available at
<http://www.legislature.idaho.gov/legislation/2011/S1156.pdf>
- Illinois Commerce Commission, Competition Data Request, available at
<https://www.icc.illinois.gov/telecomcdr/>
- Kahn, Alfred, the Economics of Regulation: Principles and Institutions, John Wiley & Sons, Inc. New York, 1970
- Kansas Statutes §66-2005, available at
http://kansasstatutes.lesterama.org/Chapter_66/Article_20/#66-2005
- Kaserman, David L. and John W. Mayo, “Competition in the Long-Distance Market,” Handbook of Telecommunications Economics, Vol.1, Martin E. Cave, Sumit K. Majumdar, and Ingo Vogelsang, eds., (Elsevier: Amsterdam, 2002)
- Laffont, Jean-Jacques, The New Economics of Regulation, Ten Years After, Econometrica, Vol. 62, No. 3 (May 1994), available at <http://econdse.org/wp-content/uploads/2011/12/Laffont-94-The-new-economics-of-regulation.pdf>
- Lichtenberg, Sherry, (2012) The Year in Review: The Status of Telecommunications Deregulation in 2012, Report No. 12-06, National Regulatory Research Institute
- Lichtenberg, Sherry (2013), Telecommunications Deregulation: Updating the Scorecard for 2013, Report No. 13-05, National Regulatory Research Institute
- Louisiana Public Utility Commission General Order R-30347; PUC Docket R-31839, Petition for Modification of Rules and Regulations Necessary to Achieve Regulatory Parity and Modernization, , 8/13/2009, available at
http://www.lpsc.louisiana.gov/_docs/_Utilities/8-14-09-3.pdf

Louisiana Public Service Commission Docket No R-31839 In Re: Petition for Modification of Rules and Regulations Necessary to Achieve Regulatory Parity and Modernization, 11/4/2013

Maine, An Act to Reform Telecommunications Regulation, 4/4/2012, available at http://www.mainelegislature.org/legis/bills/bills_125th/chappdfs/PUBLIC623.pdf

Michigan Public Service Commission, the Status of Telecommunications Competition in Michigan, June 2013.

Minnesota Statute 237.76, available at <https://www.revisor.mn.gov/statutes/?id=237.76>

Mississippi HB 825, An Act to Amend Section 77-3-3; signed 4/19/12, available at <http://billstatus.ls.state.ms.us/2012/pdf/history/HB/HB0825.xml>

Nevada bill AB486, available at <http://legiscan.com/NV/text/AB486/id/803480/Nevada-2013-AB486-Introduced.pdf>

New Hampshire SB 48, implemented 8/10/12, available at <http://www.gencourt.state.nh.us/legislation/2012/SB0048.pdf>

New Jersey Board of Public Utilities, In the Matter of the Board Investigation of Incumbent Local Exchange Carrier (ILEC) Services as Competitive – Phase II, Docket No. TX 11090570, February 2012

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.

Ohio Senate Bill 162, available at http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_162

Oregon Statutes 759.050 and 759.052, available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors759.html

Pai, Ajit, Remarks of FCC Commissioner Ajit Pai at Techfreedom's Forum on the 100th Anniversary of the Kingsbury Commitment, Washington, DC, December 19, 2013, available at www.fcc.gov

Public Utilities Commission of the State of Colorado, Docket 13M-044T, In the Matter of Commission Consideration of Effective Competition Areas and the Classification of Basic Local Exchange Service Pursuant to 4 CCR 723-1-2213.

Public Utility Commission of Texas, 2011 Scope of Competition in Telecommunications Markets in Texas, January, 2012, available at https://www.puc.texas.gov/industry/communications/reports/scope/2011/2011scope_tele.pdf

Shepherd, William C., The Economics of Industrial Organization, Prentice Hall, 1997, p. 76.

South Carolina Statutes § 58-9-576, available at <http://www.scstatehouse.gov/code/title58.php>

South Dakota Statute 49-31-1.3, available at
<http://legis.sd.gov/Statutes/DisplayStatute.aspx?Type=Statute&Statute=49>

Tennessee Code § 65-4-101 and § 65-5-109(n)(13), available at
<http://www.lexisnexis.com/hottopics/tncode/>

Texas Utility Code Annotated, §65.002, available at
<http://codes.lp.findlaw.com/txstatutes/UT/2/C/65/A/65.002>

Verizon Communications, Application of Verizon New York Inc. and Verizon New Jersey Inc. for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended to Discontinue the Provision of Service, WC Docket No. 13-150

Washington Statutes, RCW 80.36.320, available at
<http://apps.leg.wa.gov/rcw/default.aspx?cite=80.36.320>

Washington Utilities and Transportation Commission, Docket UT-121994, Order 06, Final Order Approving Settlement Agreements With Conditions And Classifying Services As Competitive In The Matter Of the Petition of Frontier Communications Northwest Inc. To Be Regulated As a Competitive Telecommunications Company Pursuant To RCW 80.36.320

Washington Utilities and Transportation Commission, Docket UT-130477, Order 04, Approving Settlement Agreements and Establishing Alternate Form of Regulation for the CenturyLink Companies – Qwest Corporation, CenturyTel of Washington, CenturyTel of Interisland, CenturyTel of Cowiche, and United Telephone Company of the Northwest, Pursuant to RCW 80.36.135, January 9, 2014

West Virginia Code §24-2-3c, Cessation of Jurisdiction over Rates For Certain Services subject To Competition, available at
<http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=24>

Wyoming Statutes, Section 77-3-3; available at
<http://billstatus.ls.state.ms.us/2012/pdf/history/HB/HB0825.xml>

Appendices

Appendix A. Legislation.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
AL	HB 169, effective 7/1/12, http://e-lobbyist.com/gaits/text/622219	All services are competitive.	On the effective date of the act adding this act, an incumbent local exchange carrier is relieved of its obligation to provide basic telephone service unless the incumbent local exchange carrier elects to retain the obligation and notifies the Public Service Commission not later than 30 days after the effective date of the act.	If the premises of a permanent residence in existence on the effective date of the act . . . is within an [ILEC's] local exchange franchise and the residence is unable to receive voice service from any provider through any voice technology, the owner . . . or a tenant may file a request for service with the commission. If the commission determines that . . . no voice service is available to the premises . . . the commission may . . . order the [ILEC] to provide voice service . . . Alternatively, the commission may conduct a competitive procurement process to identify a willing provider. In either case, the carrier . . . may utilize any technology or service arrangement to provide voice service.	(1) BASIC TELEPHONE SERVICE. Refers to a service that, as provided by an incumbent local exchange carrier, may be through any technology and through any affiliate or service arrangement and includes the functionalities described in 47 3 C.F.R. 54.101(a). Requirement sunsets 1/1/14.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
FL	Section 34-2002, http://laws.flrules.org/files/Ch2011-036.pdf	All services are competitive. All retail regulation withdrawn.			
HI	Hawaii Statutes, Ch 0261 §269-16.85, http://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0269/HRS_0269-0016_0085.htm	Retail services are fully price competitive.			Any telecommunications service deregulated or de-tariffed under this Code section may be reregulated or re-subjected to tariffing by the commission if the commission finds, through a proceeding initiated on its own or upon application by an interested party, that such reregulation or re-tariffing is in the public interest.
IL	Public Act 096-0927, 6/15/2010, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=096-0927	All carriers deregulated.	No competitive test or requirements.		

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
IN	An Act to Amend the Indiana Code Concerning Utilities - signed 2/23/12, http://www.in.gov/legislative/bills/2012/HE/HE1112.1.html	The legislature deregulated everything but basic and wholesale services in 2006, and set a 3 year timeline for the deregulation of basic service as well. Post 2009, no retail service is regulated, on price, terms of service, or quality of service.	No competitive test or requirements.		ICC to analyze the state of competition (1) the number and type of firms; (2) the services offered to retail and wholesale customers;(3) extent of competitive svc being purchased; (4) the technologies used and degree of wholesaler's reliance on other; and (5) the prices offered.
LA	LA PUC General Order R-30347, 8/13/2009; PUC Docket R-31839, http://www.lpsc.louisiana.gov/docs/Utilities/8-14-09-3.pdf	LA has "vibrant competition" with multiple competitors.	ILEC line loss; presence of multiple competitors; 28 competitors (AT&T data).	Requirement continues. 2012 legislation eliminating COLR failed.	

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
MD	Maryland Statute §8-101, http://mgaleg.maryland.gov/2014RS/Statute/Web/gpu/gpu.pdf	Commission may adopt alternate forms of regulation			
ME	An Act To Reform Telecommunications Regulation, signed 4/4/12, http://www.mainelegislature.org/legis/bills/bills_125th/chappdfs/PUBLIC623.pdf	All providers deemed competitive except providers of last resort.	All services deregulated with the exception of COLR service. No competitive test or requirements.		§8-602.a Commission has no jurisdiction over VoIP

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
MI	Michigan Telecommunica- tions Act 58; 6/15/11, http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2011-PA-0058.pdf	A telecommunication service is not a public utility service.	All services deregulated. No competitive test.	An entity that was an incumbent local exchange carrier as of January 1, 2012 shall provide provider of last resort service within its service area. The commission, in an adjudicatory proceeding, may relieve a service provider of the requirement that it have the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current.	

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
MO	An Act to Amend Chapter 392 by Adding Thereto One New Section Relating to Telecommunications. 7/8/11, http://www.house.mo.gov/billtracking/bills/111/billpdf/truly/HB0339T.PDF	All service deregulated.	Redefines service as local voice service – regardless of the method used to provide it. "Local voice service" or "local voice services", any two-way voice service offered through any form of technology that is capable of placing calls to or receiving calls from a provider of basic local telecommunications services, including voice over internet protocol services.		AFOR must include fiber deployment and broadband for schools and libraries; The purpose of an alternative regulation plan is to provide customers with service quality consistent with commission rules at affordable rates, facilitate the development of alternatives for customers, and provide a regulatory environment with greater flexibility.
NH	SB 48; signed 6/15/12; implemented 8/10/12, http://www.gencourt.state.nh.us/legislation/2012/SB0048.pdf	Excepted local exchange carriers are deregulated.	Excepted carriers :1) An ILEC providing telephone services to 25,000 or more lines; or (2) An ILEC providing service to less than 25,000 lines that elects to be excepted, upon the filing with the commission of a written notice advising of said election; or (3) Any provider of telecommunications services that is not an ILEC.		The commission may, on its own motion at any time after a determination as to whether local competition exists, reexamine and re-determine the determination after notice and a hearing on the issue.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
ND	ND Statute 49-21-01.2, http://www.legis.nd.gov/cencode/t49c21.pdf?20131209123356	All telecommunications providers deregulated.		A local exchange company that has elected to be subject to alternative regulation under G.S. 62-133.5(1) does not have any carrier of last resort obligations.	
NY	Article 5 §92, http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\$\$PBS92-G\$\$@TXPBS092-G+&LIST=LAW+&BROWSER=BROWSE+&TOKEN=24567145+&TARGET=VIEW	All non-basic services are price deregulated effective 1/19/14.			

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
N V	Legislation, AB-486, removing COLR requirements and addressing regulation of VoIP, http://legiscan.com/NV/text/AB486/id/803480/Nevada-2013-AB486-Introduced.pdf	Legislation: Any [large] telecommunication provider operating within this State is a competitive supplier.	Any large telecommunication provider operating within Nevada State is a competitive supplier.	"Regulated basic services" are defined as: residential, individual business, and public access line network access, connection charges for such network access, local usage, local coin usage rates, tone dialing, access to emergency services, statewide relay services, operator assistance services, directory listings, and provisions that affect privacy protections.	

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
WI	Wisconsin Act 22, 6/8/11, https://docs.legis.wisconsin.gov/2011/related/acts/22	All telecommunications is competitive. All regulation is terminated.		Frontier settlement agreement defining it as a competitive carrier maintains Frontier's requirements as COLR and ETC, thereby providing assurance that these services would remain available to customers throughout Frontier area. Lifeline protected by exempting beneficiaries from any price increases the Company initiates as a result of the pricing flexibility the Commission grants. Docket UT-121994	Competitive telecommunications companies shall be subject to minimal regulation. The commission may waive any regulatory requirement for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if the revocation or reclassification would protect the public interest.

Appendix B. Company Election.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
AR	Company elects, 3/23/2011, Act 594 (SB 755), http://www.arkleg.state.ar.us/assembly/2011/2011R/Acts/Act594.pdf	(5)(A) Recognize that in areas of the state served by electing companies, telecommunications connections utilizing unregulated technologies such as wireless and voice over internet protocol greatly outnumber traditional wireline connections that remain regulated by the commission.	Companies "elect" to be deregulated.		(B) The General Assembly finds that the removal of quality-of-service regulation of wireline services provided in the competitive exchanges of electing companies will serve to encourage private- sector investment in the telecommunications marketplace.
PA	Non-rural - company elects; Rural - 2 or more carriers, HB 1608 - An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes – Introduced, http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2013&Ind=0&body=H&type=B&bn=1608	LEC may declare any non-rural exchange competitive by filing a declaration. Declaration effective upon filing. Rural exchanges may be declared competitive if 2 or more alternative suppliers operate in those areas as demonstrated by LNP records or other relevant information. Non-rural exchanges with > 300 persons/sq mi are competitive. Rural exchanges competitive if 2 or more carriers.	2 or more alternative suppliers as demonstrated by LNP records or other relevant information. If the carrier promised to deploy broadband under AFOR rules, declaration not effective until 1/1/16.		

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
NC	Company elects, S343, 4/26/11; The communications regulatory reform and investment act of 2011, http://www.ncga.state.nc.us/Sessions/2011/Bills/Senate/PDF/S343v4.pdf			A local exchange company that has elected to be subject to alternative regulation under G.S. 62-133.5(l) does not have any carrier of last resort obligations.	
NJ	Carrier request, 48:2-21.19 Competitive service rates, http://njlaw.rutgers.edu/cgi-bin/njstats/showsect.cgi?title=48&chapter=2&section=21.19&actn=getsect	Rates are deregulated on carrier petition. The board is authorized to determine, after notice and hearing, whether a telecommunications service is a competitive service.	In making such a determination, the board shall develop standards of competitive service which, at a minimum, shall include evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area.		4 (c) The board shall have the authority to reclassify any telecommunications service that it has previously found to be competitive if, after notice and hearing, it determines that sufficient competition is no longer present. The board, however, shall continue to monitor the telecommunications service and, whenever the board shall find that the telecommunications service has again become sufficiently competitive, the board shall again apply the provisions of subsection a. of this section.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
TN	Carrier election, Tenn. Code Ann. § 65-4-101 and Section 65-5-109(n)(13), http://www.lexisnexis.com/hottopics/tncode/	No market regulated carrier shall be subject to the regulatory authority jurisdiction in this subdivision (h)(13) in any wire center or geographic area the carrier designates by filing notice of such designation with the regulatory authority. Such notice shall be effective immediately upon filing and not subject to regulatory authority review.	Competing telecommunications service provider" means any individual or entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services and is certificated as a provider of such services after June 6, 1995 unless otherwise exempted from this definition by state or federal law.		

Appendix C. Finite Test.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
AK	Multiple, unaffiliated carriers, State statute; 3AAC53.200 - 3 AAC 53.299, http://www.legis.state.ak.us/basis/aac.asp#3.53.200	A local exchange or a group of local exchanges within one certificated service area where multiple unaffiliated telecommunications providers are certificated to provide local exchange service.	(1) Market share of incumbent and competitors; (2) number, size, nature, and capabilities of competitors; (3) barriers to entry; (4) availability of reasonably substitutable service; (5) availability of alternative competitive facilities; (6) safeguards to restrain the exercise of market power; (7) number of customers transferred to a competitor; (8) number of customers projected to be lost to a competitor in the 12 months after the petition; and (9) other factors, including consumer complaints.		ILEC may petition for "non-dominant status" based on competition.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
DE	ILEC + 1 provider of substitute service, DE HB96, http://legis.delaware.gov/LIS/LIS147.nsf/db0ba0e2af0bf31852568a5005f0f58/e660bd35adb6f7385257b6b0077bb47?OpenDocument	(1) "Competitive services" shall mean: a. All services which are not classified as "basic" in subsection (a) of this section above; b. Any bundled service, even if the bundled service includes 1 or more basic services; or c. Any new service other than switched access service, offered after July 15, 2008.	For purposes of reclassifying basic service as competitive under § 706(c) of this title, competitive service shall be defined as services for which: a. There are similar or substitute services or products which are offered and generally available within the relevant geographic area from at least 1 unaffiliated provider; b. There is at least 1 unaffiliated service provider which is present and viable; and c. There are no significant barriers to market entry.	Basic Service : (1) Individual residential local exchange access line and residential local usage; at a location where there is no alternative provider of telephone service available to retail residential customers determined in accordance with subsection (d) below; and (2) Switched access services.	If a retail residential customer disagrees with the classification of its location as having an alternative provider, the customer may bring the dispute to the Secretary of the Department of Technology and Information to determine if an alternative provider of telephone service is available. This standard shall be satisfied if the Secretary determines that a service that provides the ability to transmit and receive voice communications, including E-911 communications, is available from an alternative provider of telephone service at the location.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
ID	1 unaffiliated carrier for both residence and small business, An Act Amending Section 62-606 , Idaho Code, effective 7/1/11, http://www.legislature.idaho.gov/legislation/2011/S1156.pdf	The commission shall cease regulating basic local exchange rates in a local exchange calling area upon a showing by an incumbent telephone corporation that effective competition exists for basic local exchange service throughout the local exchange calling area.	Effective competition exists when either: (a) Actual competition from a facilities-based competitor is present for both residential and small business basic local exchange customers; or (b) There are functionally equivalent, competitively priced local services reasonably available to both residential and small business customers from a telephone corporation unaffiliated with the incumbent telephone corporation.		
IA	Substitute services available, Iowa code 476.1D(1)(a) and Docket NOI-2013-001, https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=83&input=476#476.1D	Effective competition: a comparable service or facility is available from a supplier other than the telephone utility in the geographic market being considered by the board and whether market forces in that market are sufficient to assure just and reasonable rates without regulation.	The presence or the absence of (1) Wireless communications services,(2)Cable telephony services,(3) Voice over internet protocol services,(4)Economic barriers to the entry of competitors or potential competitors in that market.	COLOR requirement remains and applies to all carriers.	Rates are deregulated and de-tariffed. All services price deregulated in 2005. Tariffs are still required to specify quality of service standards. IUB will consider eliminating them.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
KS	2 or more carriers, HB 2201, An act concerning telecommunications, http://legiscan.com/KS/text/HB2201/id/736391/Kansas-2013-HB2201-Amended.pdf	All exchanges w >75,000 local exchange access lines price deregulated; < 75,000 lines, all business lines price deregulated; Residential: < 75,000 local exchange access lines price deregulate if there are 2 or more nonaffiliated telecommunications carriers or other entities nonaffiliated with the local exchange carrier. Carriers that request deregulations are called "electing carriers."	Business: two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One shall be required to be a facilities-based carrier and not more than one of such nonaffiliated carriers shall be a CMRS provider.	An electing carrier may elect to be relieved of the requirement to serve as carrier of last resort, as required by K.S.A. 66-2009, and amendments thereto, by providing written notification to the commission of the specific urban exchanges for which the electing carrier is electing to be relieved of carrier of last resort obligations, in the electing carrier's urban exchanges.	
MA	ILEC + 2 providers, HB 2930 (Pending), http://legiscan.com/MA/text/H2930/id/746028/Massachusetts-2013-H2930-Introduced.pdf	2 providers providing retail residential service.	Includes wireless and VoIP.		

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
MS	ILEC + 2 providers or reduction in lines over 2 years, HB 825, An Act to Amend Section 77-3-3; signed 4/19/12, http://billstatus.lstate.ms.us/2012/pdf/history/HB/HB0825.xml	The Legislature has determined that, in the provision of all services, other than switched access, competition or other market forces adequately protect the public interest. Therefore the commission no longer has jurisdiction over the services.	At least two (2) competitive telecommunications providers unaffiliated with such requesting public utility are offering service to such public utility's subscribers; or (iv) has experienced a material reduction in access lines or minutes of use in two (2) consecutive years.	The commission may apply standards adopted by the FCC generally applicable to companies that are designated and operate as ETCs pursuant to 47 USCS Section 214(e). The commission may exercise its authority to ensure that these carriers, including commercial mobile radio service providers that receive federal eligible telecommunications status, comply with those standards. No additional standards.	
NM	Availability of alternate suppliers, 63-9A-8. Regulation of rates and charges, http://public.nmcompcomm.us/nmpublic/gateway.dll?f=templates&fn=default.htm	Effective competition; parity of requirements among providers.	(1) the extent to which services are reasonably available from alternate providers in the relevant market area; (2) the ability of alternate providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions; and (3) existing economic or regulatory barriers.		

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
OH	LEC + 2 alternate providers, _OH SB 162, http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_162	Two or more alternative providers in the exchange area offer basic local service competing w the ILEC regardless of the technology and facilities used by the alternative provider, the alternative provider's location, and the extent of the alternative provider's service area within the exchange area.	An alternative provider includes a telephone company, including a wireless service provider, a telecommunications carrier, and a provider of internet protocol-enabled services, including voice over internet protocol.		
OK	ILEC + 2 alternate providers, _OAC 165: 55-1-4, http://www.oar.state.ok.us/view.html/165_55-1-4.htm	"Competitive Test" means an evaluation by the Commission to determine after notice and hearing, for a particular service on an exchange by exchange basis, the existence of competition among an ILEC, non-affiliated facilities based Competitive Provider, and one (1) other non-affiliated Competitive Provider.	ILEC + 2 additional providers; 1 facilities based; 1 other competitor. Competitive providers include "an entity providing the same or equivalent services through the use of its own or leased facilities, including resellers.		OK decision in SWBT (AT&T) deregulation petition in 2005. PUD 2005-042 Final Order deregulation of SWBT. 2 tests - competitive test on an exchange basis and competitive test on a product basis. Wireless included. OAC 165:55-5-10.1(g) allows the Commission to revoke designation if market changes.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
PA	Non-rural - company elects; Rural - 2 or more carriers, HB 1608 - An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes – Introduced, http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2013&sInd=0&body=H&type=B&bn=1608	LEC may declare any non-rural exchange competitive by filing a declaration. Declaration effective upon filing. Rural exchanges may be declared competitive if 2 or more alternative suppliers operate in those areas as demonstrated by LNP records or other relevant information. Non-rural exchanges with > 300 persons/sq mi are competitive. Rural exchanges competitive if 2 or more carriers.	2 or more alternative suppliers as demonstrated by LNP records or other relevant information. If the carrier promised to deploy broadband under AFOR rules, declaration not effective until 1/1/16.		

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
SC	ILEC + 1 wireline carrier or ILEC + 2 wireless carriers, _SC Statutes Section 58-9-576, http://www.scstatehouse.gov/code/title58.php	LEC elects alternate form of regulation.	Section 58-9-280 G)(1) Competition exists for a particular service if, for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service, its functional equivalent, or a substitute service is available from two or more providers.		The Office of Regulatory Staff must compile annual information in order to monitor the status of local telephone competition in this State. All local exchange carriers, as defined in Section 58-9-10(12), must report the total number of local access lines providing services to end users. The Office of Regulatory Staff must also maintain a copy of all written complaints received regarding the impact broadband services may be having on the competitive local exchange market. This information must be compiled and made available prior to May fifteenth of each year.
SD	1 alternate provider, Statute 49-31-1.3, http://legis.sd.gov/Statutes/DisplayStatute.aspx?Type=Statute&Statute=49	Alternative service available to 50% of subscribers; service may be defined as competitive.	50% of subscribers have alt. service available; wireless, centrex, billing and collections; optional services, private line.	49-31-1.1. "Noncompetitive service" defined. For the purposes of this chapter, "noncompetitive service" is a monopoly service for which no competition exists or the regulation of which is necessary to insure affordable local exchange service.	

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
TX	2 competitors; decision based on market size, An Act relating to communica- tions services and markets, http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/SB00980F.pdf#navpanes=0	Commission identified initial markets in 2006. Other markets may be deregulated by petitioning the commission. The commission may not re-regulate a deregulated market.	An ILEC may petition to deregulate a market if (1) the population is 100,000 or greater; or (2) the population is at least 30,000 but less than 100,000 and there are at least two competitors operating in all or part of the market. Competitors must be unaffiliated with the ILEC and at least 1 has must have a CPCN and provide residential local service using any technology, including Internet Protocol or a successor protocol; satellite; or wireless.	A transitioning or deregulated company is not required to fulfill the obligations of a provider of last resort in a deregulated market.	"Transitioning company" means an incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated. Texas Code 65-002

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
WY	1 landline and 1 wireless carrier, Act 82, exempting internet protocol enabled services from regulation, http://legiscan.com/WY/text/HB0018	Competitive telecommunications services" means those services found by the legislature or the commission to be competitive.	75% of customers have access to at least one landline carrier. The local voice telecommunications service may be provided in combination with other services. If a company does not differentiate between residential and business classes of service in its application, at least 60% have access to at least one unaffiliated landline carrier; (ii) At least 75% of the class of customers in the area have access to at least 1 unaffiliated wireless provider.		(i) The extent to which services are available from alternative providers including, but not limited to, wireless providers, cable providers offering voice services, voice over internet protocol or any other providers utilizing telephone numbers to provide voice services in the relevant market; (ii) The extent to which telecommunications services of alternative providers are functionally equivalent, for equivalent service or in combination with other services, and may be substituted at reasonably comparable prices, terms and conditions; (iii) Existing economic, regulatory or technological barriers to entry. This chapter is repealed effective July 1, 2015.

Appendix D. Commission Decision.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
AZ	Commission Decision, Title 40-202, http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/40/00202.htm&Title=40&DocType=ARS	Company may apply for alternate regulation on a case by case basis.			
CA	Commission decision, CA Statutes Article 1, §495.7, http://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml	No specific definition. No regulation of IP-enabled services.	(1) The Telco lacks significant market power for the service to be exempted (2) there are competitive alternatives available to most consumers, and sufficient consumer protections exist to minimize the risk to consumers and competition from unfair competition or anticompetitive behavior.	Tariffing requirements removed. Basic service price deregulated in 2011.	No VoIP or wireless regulation.
CO	Commission decision, PUC competition proceeding, Docket 13M-0422T, Decision C13-0522, https://www.dora.state.co.us/pls/efi/EFI_Search_UI.search	Rule 4 CCR 723-2-2001(gg) effective competition area(ECA) = a wire center serving area in which the PUC has reclassified basic local exchange service pursuant to § 40-15-207, C.R.S.	(1) Barriers to market entry; (2) # of providers offering similar service; (3) svc availability at comparable rates, comparable terms and conditions; (4) market power; (5) other.	Basic service no longer regulated in ECAs, with the exception of E911 and directory listings. PUC will keep complaint jurisdiction.	Decision on a case by case basis w/ hearings; as of 12/9/13, staff recommends that 56 wire centers be deemed effectively competitive.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
CT	Commission decision, CT Statute Sec. 16-247f, http://search.ct.state.ct.us/dtsearch/pub_statutes.html	Services in place before 2004 and services judged competitive based on commission investigation.	(1) The number, size and location of certified providers, provided the authority shall not reclassify any service as competitive if such service is available only from a telephone company or an affiliate of a telephone company that is a certified provider;(2) The availability of functionally equivalent services in the relevant market at competitive rates, terms and conditions, including, wireline, wireless, VoIP, and other alternative technologies;(3) barriers to entry (4) Other factors that may affect competition; and (5) Other factors that may affect the public interest.		

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
DC	Commission, 2012 District of Columbia Code; Section 34-2002, http://law.justia.com/codes/district-of-columbia/2012/division-v/title-34/subtitle-v/chapter-20/section-34-2001.html	Local exchange carriers will be regulated according to each LEC's respective market power in the local exchange market, and in such manner as to prohibit abuse of monopoly power and facilitate adjustments in pricing as developing competition dictates a need for market flexibility.	ILEC must present a plan benefits of deregulation. (1) public interest;(2) network elements tariffed 3) offer fair, just, and reasonable (4) accounts for changes in technology; (5) specifies customer benefits; (6) maintains the quality and availability of telecommunications services;(7) includes safeguards to ensure that the BOC does not discriminate in favor of any t provider, including itself;(8) The plan safeguards against subsidies, (9) does not unreasonably prejudice or disadvantage any customer class or provider.		

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
GA	Commission decision, HB1115; An Act to revise and update certain provisions relating to telecommunications, signed 5/1/12, effective 7/1/12, http://www1.legis.ga.gov/legis/2011_12/pdf/hb1115.pdf	Commission decision: (1) Totally deregulate a service; (2) Totally eliminate any tariffs on a service; (3) Eliminate tariff rates for a service but retain tariffs for service standards and requirements; or (4) Eliminate tariff rates for a service but require that notice of any rate changes be provided to the commission. Decision is based on availability of functionally equivalent or substitute services from competitive providers in the relevant geographic market. This finding must be made on the record after public hearing.	Competitive factors: (1) The extent to which competing services are available from competitive providers in the relevant geographic market; (2) availability of functionally equivalent services; (3) number and size of competitors; (4) impact of the decision on the continued availability of existing services at just and reasonable rates; (5) The impact of the change upon universal availability of basic telecommunications services at affordable rates and the ability of telecommunications companies subject to the jurisdiction of the commission to respond to competitive thrusts; and (6) Other public interest factors.		Any telecommunications service deregulated or de-tariffed under this Code section may be reregulated or re-subjected to tariffing by the commission if the commission finds, through a proceeding initiated on its own or upon application by an interested party, that such reregulation or re-tariffing is in the public interest.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
KY	Commission, Title XXIV §278.512, http://www.lrc.ky.gov/statutes/statute.aspx?id=14142	278.512(2) The Commission may exempt services or telecommunications products from rate regulation, or may adopt alternative requirements for establishing rates and charges for any service. Commission motion or co. request.	(a) Competitive service availability; (b) availability of functionally equivalent or substitute services; (c) number and size of competitive providers; (d) impact of deregulation on existing services at just and reasonable rates; (e) safeguards against subsidies; (f) impact on universal service; (g) ability for all to compete on a level playing field; (h) overall customer impact; (i) other public interest factors.	Requirement continues. 2012 legislation eliminating COLR failed.	
MN	Commission decision, MN Statute 237.76, https://www.revisor.mn.gov/statutes/?id=237.76	Carrier may petition for alternate regulation.	(1) The number, size, and identity of competitors providing the same or functionally equivalent service; (2) the geographic area in which competitive service is available to and being used by customers (3) the importance of the service to the public; and (4) the effect of classification of the service on the development of a competitive market.		AFOR must include fiber deployment and broadband for schools and libraries; The purpose of an alternative regulation plan is to provide customers with service quality consistent with commission rules at affordable rates, facilitate the development of alternatives for customers, and provide a regulatory environment with greater flexibility.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
MT	Commission decision, SB0246 amending Section 69-3-809 MCA, 4/21/11, http://leg.mt.gov/content/Publications/sales/2011-session-law-vol2.pdf	A provider may petition for alternative regulation.	The plan must demonstrate that it (a) will not degrade the quality of or the availability of efficient telecommunications services; (b) will produce fair, just, and reasonable rates for telecommunications services; (c) will not unduly or unreasonably prejudice or disadvantage a customer class; (d) will reduce regulatory delay and costs; (e) is in the public interest; (f) will enhance economic development in the state; (g) will result in the improvement of the telephone infrastructure in the state.		Tariff requirements continue.
NE	Commission Decision, Leg Bill 257, 3/16/11, amending § 86-143 and 86-144 of the Telecommunications Regulation Act, http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB257.pdf	Except for requirements established by statute, the commission may limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation.	Local competition shall be deemed to exist in an exchange if a telecommunications company files an application with the commission requesting a determination as to whether local competition exists in one or more exchanges specified in the application and the commission enters an order after public notice and a hearing which determines that local competition exists in such exchange or exchanges. The commission may consider wireless service when determining whether local competition exists.		The commission may, on its own motion at any time after a determination as to whether local competition exists, reexamine and re-determine the determination after notice and a hearing on the issue.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
OR	Commission decision - alternative suppliers, OR Statutes 759.050 and 759.052, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors759.html	759.052 Commission authority to exempt telecommunications services from regulation. (1)(a) Upon petition by any interested party and following notice and investigation, the Public Utility Commission may exempt services from regulation.	The commission shall consider: (a) the extent to which services are available from alternative providers, (b) the extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates and under comparable terms and conditions, (c) existing economic or regulatory barriers to entry, (d) any other factors deemed relevant.		(4) A service that is deregulated may be reregulated, after notice and hearing, if the commission determines an essential finding on which the deregulation was based no longer prevails, and reregulation is necessary to protect the public interest. [2005 c.232 §8]; large ILECs operate under AFOR plan.
RI	Commission Decision, Verizon AFOR order, http://www.ripuc.org/utilityinfo/telecom/3692-VRI-Ord18550(3-17-06).pdf	Sufficient competition to restrain the ILEC from exercising market power, defined as the ability to profitably raise prices above the competitive level for a sustained period of time; market share is the chief tool for assessing the competitive nature of a market.	Alternate regulation plan based on competitive conditions and line loss to CLECs, VoIP, and wireless; definitions of relevant markets, products, and competitors.		VZ testimony: an unregulated competitive market maximizes consumer welfare and regulation exists to replicate, to the extent possible, the effects of a competitive market. As a result, less regulation is needed where competitive forces are sufficient to discipline firms to produce products and services customers want at reasonable prices. AFOR ruling allows commission to re-regulate if circumstances change.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
UT	Commission decision, UT Code, Section 454-8b, http://le.utah.gov/code/TITLE54/htm/54_08b000300.htm	454-8b-3(3) The commission may exempt a company or service from regulation if there is effective competition; and (b) the exemption is in the public interest.	Factors may include:(a) the extent to which competing telecommunications services are available from alternative providers; (b) the ability of alternative providers to offer competing services that are functionally equivalent or substitutable and reasonably available at comparable prices, terms, quality, and conditions; (c) the market share of the telecommunications corporation for which an exemption is proposed; (d) the extent of economic or regulatory barriers to entry; (e) the impact of potential competition; and (f) the type and degree of exemptions proposed.		
VA	Commission decision, HB2367; 3/28/11, http://lis.virginia.gov/cgi-bin/legp604.exe?111+ful+CHA P0738	The Commission may conclude that competition can effectively ensure reasonably adequate retail services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing reasonably adequate retail service in its competitive exchanges by monitoring individual customer complaints and requiring appropriate responses to such complaints.			The Commission shall have the authority upon request of an individual, corporation, or other entity, or a telephone company, to determine whether the wireline or terrestrial wireless communications service available to the party requesting service is a reasonably adequate alternative to local exchange telephone service.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
VT	Commission decision, Vermont Statutes § 227a. Pricing of competitive telecommunications services (1987), http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=30&Chapter=005&Section=00227a	If, after hearing, the board determines that a competitive market exists for the provision of any telecommunications service offered by a company subject to its jurisdiction, the board may suspend or reduce any or all of the regulatory requirements otherwise applicable to the provision of such service.			

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
WA	Commission decision, multiple providers by competitive areas, State Statute, RCW 80.36.320, http://apps.leg.wa.gov/rcw/default.aspx?cite=80.36.320	The company's customers have reasonably available alternatives and the company does not have a significant captive customer base.	(a) Number and sizes of alternative providers; (b) Extent to which services are available from alternative providers in the relevant market; (c) Ability of alternative providers to make functionally equivalent or substitute services available at competitive rates, terms, and conditions; and (d) Other indicators of market power -- market share, growth in market share, ease of entry, affiliation of service providers.	Frontier settlement agreement defining it as a competitive carrier maintains Frontier's requirements as COLR and ETC, thereby providing assurance that these services would remain available to customers throughout Frontier area. Lifeline protected by exempting beneficiaries from any price increases the Company initiates as a result of the pricing flexibility the Commission grants. Docket UT-121994	Competitive telecommunications companies shall be subject to minimal regulation. The commission may waive any regulatory requirement for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if the revocation or reclassification would protect the public interest.

	Title, Statute/Bill	Deregulation Definition	Factors for determining competition	Basic Service/COLR requirement	Notes
WV	Commission decision, WV Code §24-2-3c. Cessation of jurisdiction over rates for certain services subject to competition, http://www.legis.state.wv.us/wvc/ode/ChapterEntire.cfm?chap=24	Rates are deregulated on carrier petition.	Evidence of ease of market entry, the presence of other competitors and the availability of like or substitute services shall be sufficient to show that a commodity or service is subject to workable competition.		