The Year in Review: The Status of Telecommunications Deregulation in 2012

Sherry Lichtenberg, Ph.D.

June 2012
12–06

Acknowledgments

The author wishes to thank **Robin Ancona** of the Michigan Public Service Commission, **Joel Shifman** of the Maine Public Utilities Commission, and **Bryan Rybarik** of the Wisconsin Public Service Commission for taking the time to talk about the changes caused by the deregulation bills and laws in their states. She also thanks **Gene Hand** (Nebraska PSC) **Roxanne Scott** (California PUC), **Professor Barbara Cherry** (Indiana University), and **Robert Mayer** (USTelecom Association) for peer reviewing this document, as well as **Aline Bertolin** (Georgetown University School of Law student) for her work researching the status of basic service.

Executive Summary

The Year in Review: The Status of Telecommunications Deregulation in 2012

Telecommunications services are regulated by a combination of rules from Congress, the Federal Communications Commission (FCC), state public utility commissions (PUCs),[1] and state legislatures. State legislatures give PUCs the authority to develop and enforce rules about the way in which telecommunications companies behave, including whether they must file retail-pricing information with the commission (tariffs), whether they must meet certain quality-of-service standards, whether they must provide basic service or operate as carriers of last resort (COLRs), and whether they are eligible for high-cost or Lifeline[2] support. As more companies have begun competing to provide customers with different kinds of telecommunications services (wired phones, wireless phones, and phone service provided by cable companies), many of these state legislatures have reevaluated the need for PUC oversight of these companies.

Between 2010 and April 30, 2012, 21 state legislatures enacted laws that limit what PUCs can regulate. Nine of these states severely limited or completely eliminated COLR obligations and the requirement that carriers provide a tariffed basic local service product. All of these states eliminated PUC oversight of Voice over Internet Protocol (VoIP) or other IP-enabled services. As of the end of April 2012, deregulation legislation was pending in an additional 14 states.

This paper reviews the state telecommunications deregulation bills enacted between 2010 and April 2012 in order to identify and characterize the limits they impose on PUC jurisdiction over telecommunications providers. It highlights the key points of these new laws and compares the ways in which different states have addressed this issue in markets where legislation has removed regulatory oversight. The paper also identifies key gaps caused by the new laws and suggests options for ways in which regulators may continue to have input into carrier-network monitoring and maintenance so that customers can continue to have access to emergency services and other critical telecommunications functionality. Finally, the paper provides regulators with options for working with state legislatures to craft new legislation, monitor the success of the regulations, and suggest modifications to legislation as required.

---

[1] The term "PUC" is used as a generic term in this paper: it includes all state regulatory agencies that have jurisdiction over telephone services within their individual states.

[2] The Lifeline program provides discounts on monthly local-exchange-service charges. States may define the qualifications of low-income customers eligible for this program, and states may define the methods of enrollment.

Table of Contents

I. Introduction **1**

II. Deregulation Bills Were Enacted in Every ILEC Region Between 2010 and April 2012 .... **3**

A. Rate deregulation began in earnest after Congress passed the 1996 Telecommunications Act 3

B. By April 2012, state legislatures had reduced public utility commission jurisdiction over wireline services in a third of the country 4

1. The 2010–2012 legislation at a glance 6

2. Competition cited as the key reason for deregulation 9

C. The 2010–2012 legislation reduces pricing and quality-of-service oversight and removes jurisdiction over broadband transport and services 11

1. Tariffs are required only for intrastate access, special access, and basic service 11

2. "Deregulated" carriers are no longer subject to traditional quality-of-service metrics or penalties. 13

3. Commissions retain only limited authority for reviewing and resolving customer complaints 15

4. Commissions may not regulate broadband services, including VoIP 17

5. Carrier-of-last-resort (COLR) provisions have been modified or, in some cases, eliminated entirely. 18

6. Wholesale obligations remain unchanged 20

III. Commissions Are Responding to Deregulation by Consolidating Functions, Revising Rules, and Seeking Stakeholder Input on New Regulatory Processes 21

A. The Florida Public Service Commission reorganized to meet the requirements of the Florida Telecommunications Reform Act 21

B. The North Carolina Utilities Commission modified its rules to address the changes required by deregulation legislation....22

C. The Maine Public Utilities Commission recommended changes to the regulatory process in advance of new legislation 23

IV. What Options Do State Regulators Have for Responding to "Deregulation Fever"?....26

A. Understand the rationale for deregulation....28

B. Identify potential areas of concern and opportunities for revisions....29

C. Work with state legislators and industry to resolve issues 31

V. Summary....32

Appendix: Enacted and Pending Telecommunications Legislation by State 34

The Year in Review: The Status of Telecommunications Regulation in 2012

I. Introduction

The 1934 Communications Act, as amended, places regulation of wireline, wireless, and cable communications in the hands of the Federal Communications Commission (FCC), in cooperation with the states. The act gives the FCC jurisdiction over interstate and international communications and the state public utility commissions (PUCs) jurisdiction over most intrastate telecommunications services.[3] State legislatures grant PUCs the authority to develop and enforce rules about the way in which telecommunications companies operate, including whether they must file retail-pricing information with the commission (tariffs), whether they must meet quality-of-service standards,[4] and whether they are eligible for state high-cost or lifeline support. State legislatures also determine how state commissions will operate, including the level of authority they have over the companies they regulate.

The passage of the Telecommunications Act of 1996 (TA96)[5] opened local markets to competition and began to change the way in which state legislatures and public utility commissions viewed telecommunications services and providers. As telecommunications competition has increased, commissions, companies, and state legislators have begun to reassess the need for and the type of regulation necessary when consumers have multiple options for communications services, including wireline, cable-voice, and wireless options. Between 2010 and the end of April 2012, 20 state legislatures passed laws that limit what the PUC can and cannot regulate. For example, the Florida Regulatory Reform Act[6] eliminated or severely curtailed commission oversight of retail telecommunications, including eliminating all oversight of interstate telecommunications, limiting the Florida Public Service Commission's (FPSC's) designation of eligible telecommunications carriers to traditional wireline providers, and removing jurisdiction over consumer complaints, including slamming. Other states, like

---

[3] Congress gave the FCC exclusive jurisdiction over "entry" and "rate" regulation of wireless service providers; but gave the FCC and the States concurrent jurisdiction over "terms and conditions" of wireless service. (47 U.S.C.§ 332 (c)) Jurisdiction over broadband transport remains in flux. *See* Timothy Lay, *Taking Another Look at Federal/State Jurisdictional Relationships in the New Broadband World*, NRRI, September 2011, available at http://nrri.org/documents/317330/0a215d85-787a-4ca0-a1fd-fcc59f28ffe0

[4] Traditional quality-of-service metrics include speed of repair, the total number of outages during a given period, billing accuracy, and installation timeliness and quality.

[5] Telecommunications Act of 1996 (TA96), Pub. LA. No. 104-104, 110 Stat. 56 (1996), available at http://transition.fcc.gov/Reports/tcom1996.pdf

[6] FL Chapter 2011-36, Florida Regulatory Reform Act (originally HB1231), available at http://laws.flrules.org/files/Ch_2011-036.pdf

Michigan, Texas, Wisconsin, and Mississippi, passed legislation making similar reductions in commission jurisdiction over telecommunications products and providers. This research paper examines the status of telecommunications regulation across the country as a result of regulatory-reform efforts pursued between 2010 and April 2012. It reviews the key points of the deregulatory legislation and proposes options commissions may use in working with their state legislatures to determine how they can best support the new competitive telecommunications environment. This paper does not address regulatory changes made prior to 2010; nor does it review specific changes to rates, tariffs, or regulatory approaches in place prior to the deregulation initiatives discussed here. This paper is directed to commissioners who wish to prepare legislative testimony on the impact of deregulation, legislators who want to see how the bills they are proposing compare to regulatory changes made in other states, and commission staff members who wish to gauge the impact of these new rules on consumers, companies, and others.

Part II reviews the deregulation bills enacted between 2010 and April 2012 that reduce regulation of carriers as a result of increased competition in the telecommunications marketplace and changing customer behavior. The goal expressed by many state legislatures in enacting this legislation has been to level the playing field among traditional wireline carriers and new, multimodal entrants. In order to help commissions understand the ways in which various stakeholders have influenced this legislation, in this section of the paper, we review the changes in state telecommunications regulation on a regional basis and provide exhibits comparing the activities of the three largest Incumbent Local Exchange Carriers (ILECs)—AT&T, Verizon, and CenturyLink—across their territories.

Part III examines the impact of reduced regulatory oversight on state commissions, the carriers they regulate, and the consumers they support. It reviews the ways in which commissions in states where services have already largely been deregulated are responding to these changes, and looks at how other state commissions are crafting their own deregulation plans in advance of legislation. This section focuses on the FPSC's response to the Telecommunications Reform Act of 2011, the Maine Commission's plan for telecommunications deregulation and the legislation subsequently enacted by the state legislature, and the Colorado Commission's review of competition within the state.

Finally, **Part IV** provides options for ways in which state regulators might respond to these changes, including using their influence to work with their state legislatures and telecommunications carriers to craft new regulations that limit traditional oversight while at the same time ensuring that customers continue to have access to emergency services and other critical telecommunications functionality. Telecommunications deregulation is not a one-size-fits-all process. By working together, state legislatures, carriers, and commissions can pass legislation that benefits all those involved.

II. Deregulation Bills Were Enacted in Every ILEC Region Between 2010 and April 2012

A. Rate deregulation began in earnest after Congress passed the 1996 Telecommunications Act

Prior to the 1990s, the majority of local and intrastate telecommunications services were offered under tariffs approved by state commissions. Carriers were required to file requests with these commissions to change rates or create new pricing schemes. This type of regulatory oversight began to be reduced shortly after the Telecommunications Act of 1996 (TA96) was implemented. Legacy carriers began to seek pricing flexibility and used the influx of new competitors made possible by the Act to support their proposals. By 2004, all of the Regional Bell Operating Companies (RBOCs) had had at least some success in reducing regulatory oversight. Qwest (now CenturyLink) had implemented alternative regulation plans in Arizona, Colorado, Idaho, Minnesota, South Dakota, Utah, Washington, and Wyoming and achieved complete retail-rate deregulation in Nebraska and South Dakota.[7] Verizon had achieved full retail-rate deregulation in Maryland, and the Alabama Public Service Commission had begun to review all of the state's local exchange providers to determine whether the technological and competitive changes that had occurred since the passage of TA96 required a corresponding regulatory change.[8]

By the end of 2006, 33 states had moved from rate-of-return to price-cap regulation, with state commissions retaining pricing jurisdiction in competitive markets only over basic local service.[9] Qwest was price deregulated in 5 of its 14 states, and Verizon had been price deregulated in Rhode Island. AT&T had proposed plans in Texas and Michigan limiting regulation to ensuring that carriers provided basic local service at "just and reasonable" prices.

Although they were never as highly regulated as the ILECs, CLECs also achieved regulatory relief between 2004 and 2006. By the end of 2006, CLECs were no longer required to file tariffs in Montana, Nevada, North Carolina, Oregon, Vermont, Washington, or Wisconsin.[10]

---

[7] Lilia Perez-Chavolla, *State Retail Rate Regulation of Local Exchange Providers as of September 2004*, NRRI, November 2004, available at http://communities.nrri.org/documents/317330/a120a74d-0f87-4393-b39f-115c42b370b4

[8] Ibid.

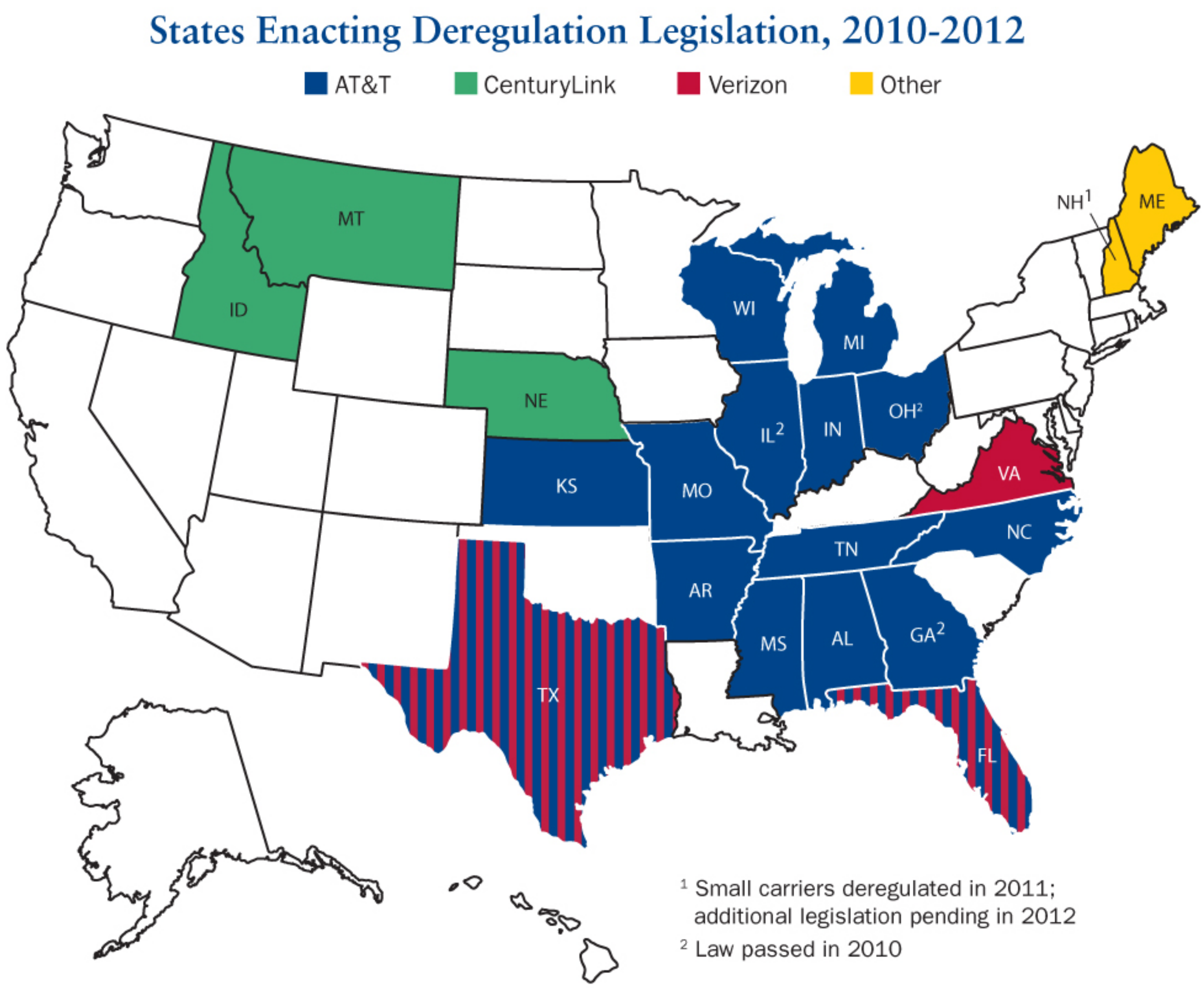
[9] "Basic local service" was defined as a single analog line with a directory listing and the ability to block long-distance calling. While each state had a slightly different definition for "competition," most states required two competitive carriers that offered "facilities-based" local residential service in order to designate an area as competitive.

[10] Lilia Perez-Chavolla, *State Retail Rate Regulation of Local Exchange Providers as of December 2006*, available at http://communities.nrri.org/documents/317330/0d4f3a0f-d0cf-4453-af86-cbf11c7d7efd

B. By April 2012, state legislatures had reduced public utility commission jurisdiction over wireline services in a third of the country

By the end of April 2012, more than one third of the nation (21 states) had deregulated its incumbent wireline carriers, and all had adopted language ensuring that broadband transport and VoIP services would remain outside commission jurisdiction. The states passing deregulation legislation during this period are shown in the map in Figure 1, which is color coded to identify the predominant carrier in the state.[11]

Figure 1

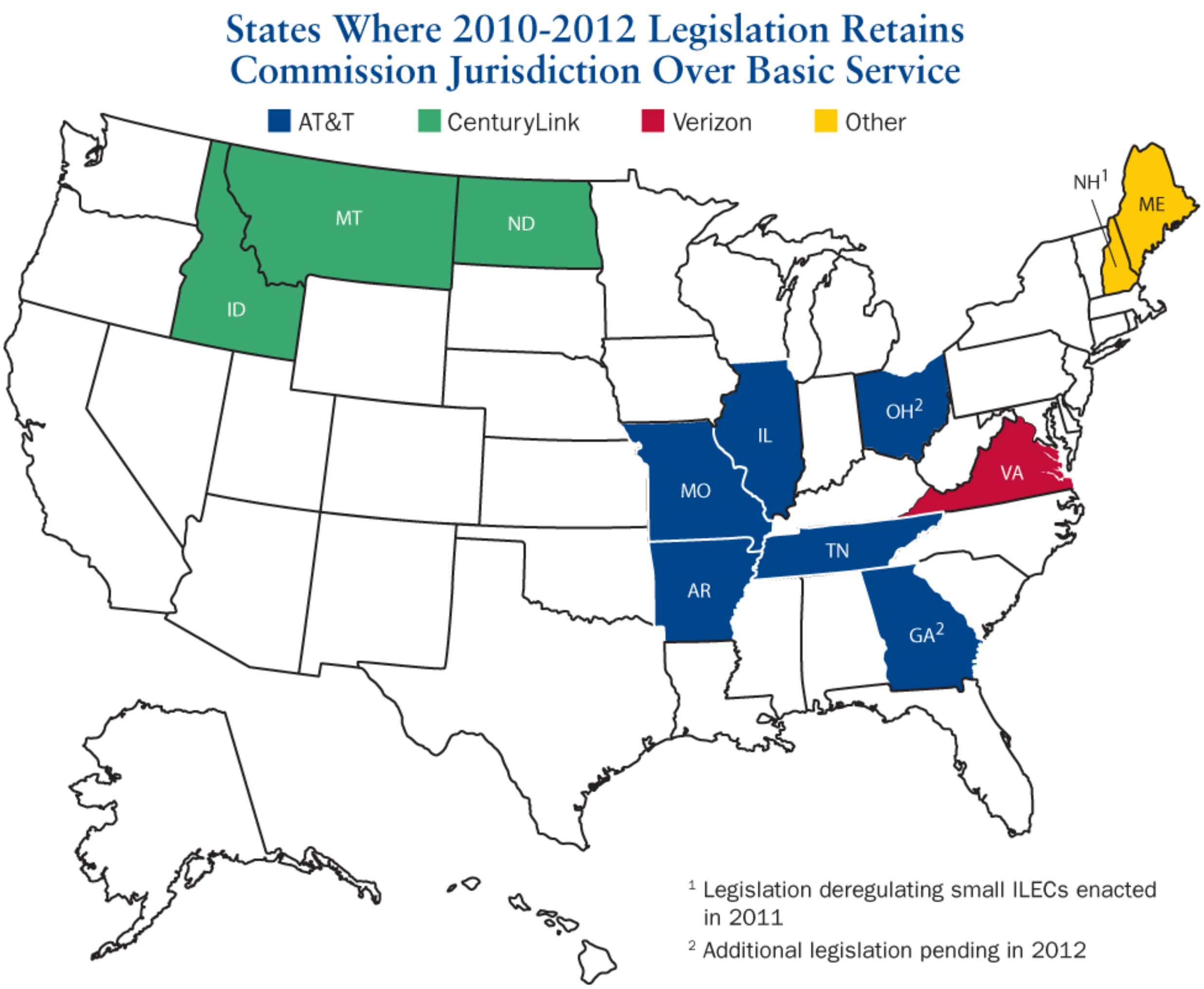


---

[11] Verizon and AT&T are both ILECs in Florida, Texas, and California.

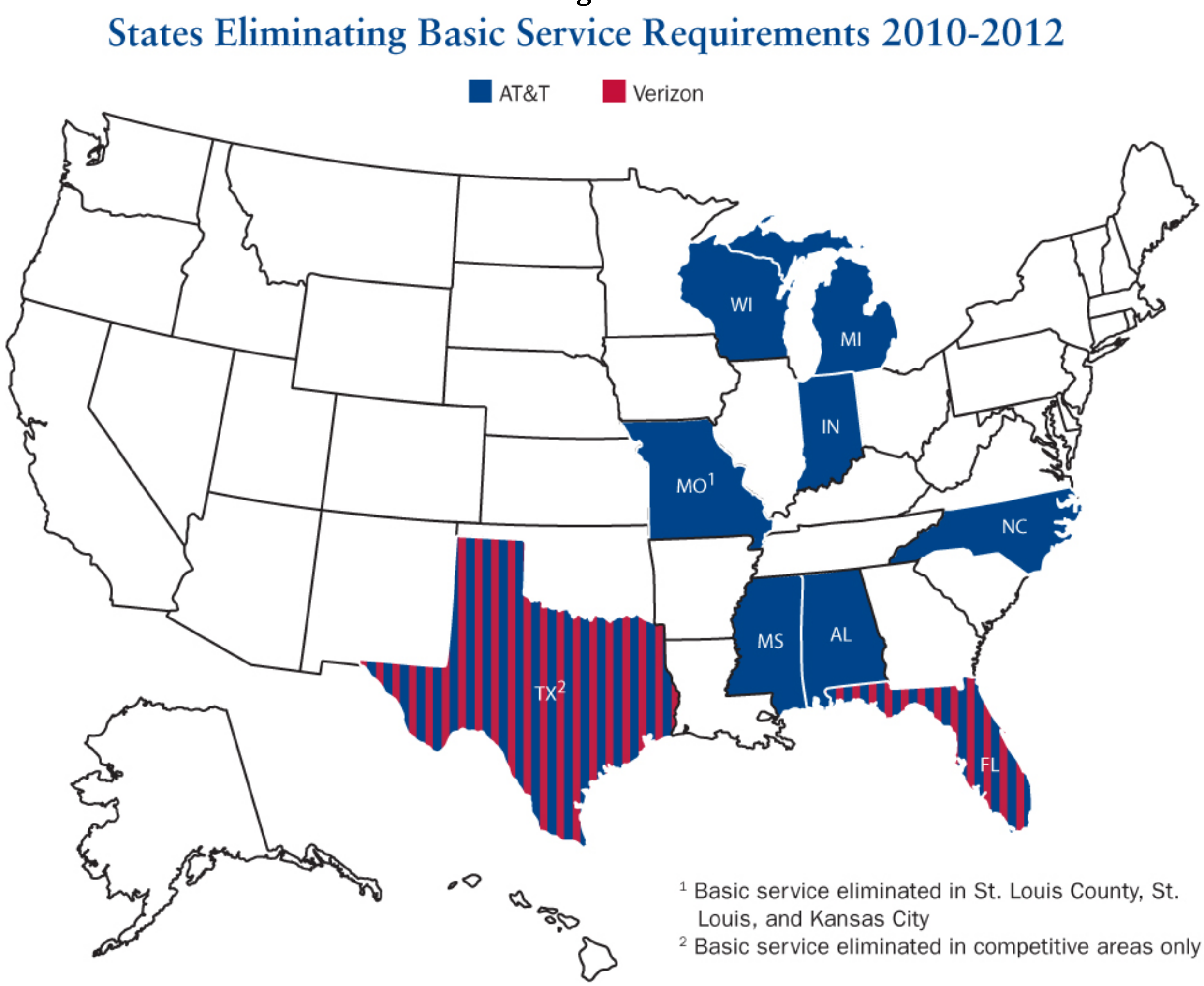
While many states have eliminated oversight of all retail services, 11 of the 20 states enacting deregulation legislation during this period have preserved commission jurisdiction over providers of last resort and basic local service; these states are shown in Figure 2.

Figure 2



Finally, the nine states shown in Figure 3 enacted legislation eliminating the regulation of all retail telecommunications services, including basic-service and carrier-of-last-resort (COLR) requirements.

Figure 3



1. The 2010–2012 legislation at a glance

Between 2010 and April 2012, 20 states adopted legislation limiting the regulation of, or completely withdrawing the public utility commission's jurisdiction over, the states' major telecommunications carriers. AT&T has been the most active of the ILECs in seeking deregulation. Thirteen of the states that passed deregulation legislation were in the territory where AT&T is the primary carrier,[12] one (Virginia) was in a state where Verizon is the primary carrier,[13] three (Idaho, Nebraska, and Montana) were in a territory where CenturyLink (formerly Qwest) is the primary carrier, and one (New Hampshire) was a state where FairPoint provides local service.[14] The Maine legislature passed a resolution in 2011 requiring the public utility commission to develop and submit a plan for reforming telecommunications regulation to the legislature by the end of 2011. Maine enacted its new telecommunications-regulation law in 2012, incorporating nearly all of the recommendations provided in this plan.[15] By the end of April 2012, further legislation had been introduced in the remaining states where AT&T is the primary carrier, legislation reducing the regulation of FairPoint was under review in New Hampshire and Vermont, and legislation reducing oversight in Colorado and the other Western states where CenturyLink is the ILEC was also under consideration.

The legislation enacted between 2010 and 2012 provides incumbent carriers with operational and regulatory flexibility equivalent to that of their non-wireline and cable competitors.[16] It gives these companies increased pricing flexibility (even for basic service), removes local and intrastate tariff requirements, and limits (or in some cases completely removes) quality-of-service oversight. Although a number of states preserved the state commissions' role in reviewing and adjudicating customer complaints regarding local service, slamming, cramming, and other issues, the more aggressive bills, like Florida's Regulatory Reform Act, removed all jurisdiction over retail telecommunications, including basic service.

---

[12] Texas and Florida are served by both AT&T and Verizon. The 2011 AT&T-supported bill in Connecticut died in committee, but a similar bill was introduced in the 2012 legislative session.

[13] Rhode Island passed SB 265 in 2011 to deregulate business services. It is not included in the number of states passing legislation limiting the oversight of retail services. Verizon services in the shared territories of Texas and Florida were deregulated as a result of bills passed in those states but are shown in the AT&T statistics, because it is the dominant carrier in those states.

[14] 2011NH Statutes Chapter 175 (originally SB22), "Relative to the alternative regulation of small incumbent local exchange carriers," June 2011, available at http://www.gencourt.state.nh.us/legislation/2011/SB0022.html. This Act allows ILECs with 25,000 access lines or fewer, or those that have lost 25% of their lines to competition since 2004, to petition the commission for alternative regulation. Additional deregulation legislation was under consideration at the end of 2012.

[15] *Maine Resolve, To Direct the Public Utilities Commission to Develop a Plan to Reform Telecommunications Regulation*, available at http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1075&item=3&snum=125. We discuss the Maine commission's response to deregulation and the subsequent law in Section III of this paper.

[16] For the purposes of this paper, we use the term "wireline carriers" to refer to the traditional circuit-switched carriers that provide service over the PSTN. Although cable companies provide service via "wires," we do not include them in this group, because they primarily use VoIP or other non-traditional methods for call delivery.

The Florida Regulatory Reform Act (FL Reform Act) is the most far-reaching of the bills enacted during the period covered by this report.[17] The act completely removed the commission's (already) limited jurisdiction over interexchange (long-distance) providers (IXCs), wireless ETCs,[18] and operator-services providers. It revised the definition of telecommunications companies to remove operator-services providers and revised the list of services exempted from oversight to include all retail wireline offerings, including basic service,[19] as well as retail bundled services and service provided via Internet Protocol (VoIP). The FL Reform Act also eliminated the commission's authority to oversee retail-service quality and to adjudicate individual customer complaints.[20] In addition, the law eliminated the requirement that providers file tariffs with the commission for anything other than intrastate access services.

Under the new law, commission staff continue to designate wireline ETCs, issue certificates for wireline companies operating in Florida, and oversee payphones (although the market for this product is declining significantly), as well as oversee the Telecommunications Relay Service (TRS) process for the deaf, hard of hearing, and speech impaired. In addition, the staff retains responsibility for reviewing and resolving customer issues regarding Lifeline, and for assessing and collecting the commission's Regulatory Assessment Fee (RAF) for certified carriers. The commission also retains responsibility for functions delegated to the states by federal statute and the FCC, including arbitrating interconnection agreements and resolving carrier-to-carrier disputes.

While not as stringent as the FL Reform Act, all of the bills enacted between 2010 and April 2012 specifically deregulate VoIP services and reduce or eliminate commission jurisdiction over quality of service, customer complaints, and most retail rates.

In some states, primarily in the southwest (where Southwestern Bell was the primary carrier prior to the 1996 Act), the bills also eliminate COLR requirements in those areas where customers can choose among competing carriers (regardless of service type or price). None of the bills passed during this period reduce or change the state commission's role in arbitrating wholesale interconnection agreements or resolving carrier disputes as required by Sections 251 and 252 of TA96. The bills also continue the commissions' oversight of intrastate access charges.

---

[17] FL Chapter 2011-36, Florida Regulatory Reform Act (originally HB1231), available at http://laws.flrules.org/files/Ch_2011-036.pdf

[18] The commission retains some limited jurisdiction over wireline ETCs.

[19] The distinction between TDM service and IP service will become increasingly important as companies like AT&T phase out their circuit-switched networks.

[20] The commission retains jurisdiction over carrier-to-carrier disputes, including slamming complaints brought by carriers against other carriers on behalf of their customers.

Links to and summaries of the deregulation bills enacted through April 30, 2012 or proposed during the 2012 legislative session appear in the Appendix.

2. Competition cited as the key reason for deregulation

Many of the new laws cite competition as the reason for deregulation. The 2010–2012 legislation deregulates carriers in areas where customers have a choice between the incumbent and another, unrelated carrier, regardless of the type of service provided. Each of the new state laws defines competition slightly differently. Arkansas has one of the broadest definitions, declaring that all Arkansas exchanges are competitive. Other state laws have provisions authorizing regional deregulation. Under the Illinois Act passed in 2010, carriers may declare that they are competitive and select alternative regulation.[21] And in Texas and Michigan, ILECs may petition the commission for deregulation in areas where two unaffiliated competitors provide telecommunications service, including satellite service.[22] Thus, in Texas, for example, a territory where AT&T provides wireline voice service and Verizon or another wireless carrier provides mobile service would be considered "competitive" for the purposes of deregulation, even though the wireless coverage could be limited or spotty.

The bills passed or proposed in the western states—Colorado, Idaho Minnesota, Montana, Nebraska, New Mexico, and Utah—where CenturyLink is the primary ILEC, similarly limit regulatory oversight in competitive locations. During the 2011and 2012 legislative sessions, the Colorado legislature considered SB 262 and SB 157 to deregulate telecommunications services in the state. SB 262 defined competition as the presence of three providers that have been competing for two years, regardless of service type. Although SB 262 failed, a second deregulation bill, SB 157, also defining competition based on the availability of multiple competitors, was introduced in March 2012.[23]

State legislatures and traditional wireline carriers have supported deregulation as a way to level the playing field between incumbent wireline carriers and their competitors. The majority of the legislation enacted between 2010 and April 2012 removes regulatory requirements that apply only to wireline carriers, bringing them into line with non-traditional carriers like CLECs and the cable companies. The bills passed in the states where AT&T is the incumbent carrier

[21] IL Public Act 096-0927, available at http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=096-0927

[22] Texas, *An Act Relating to Communications Services and Markets* (formerly SB980); available at http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB00980F.pdf#navpanes=0 h; Michigan Telecommunications Act 58, available at http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2011-PA-0058.pdf

[23] CO Senate Bill 262, available at http://e-lobbyist.com/gaits/text/276061. A second bill, SB 157, the Telecommunications Modernization Act of 2012, defines competitive locations as those with five providers, one of which may be a satellite provide and another an over the top (nomadic) VoIP provider. SB 157 was withdrawn by its sponsors on May 4, 2012. *See* http://e-lobbyist.com/gaits/text/613925.

(for example, Florida and Georgia in its former BellSouth territory and Texas and Arkansas in the former SBC region) speak directly to the need to treat all competitors in the same manner, a sentiment that translates into deregulating the incumbents. The legislation also cites a more relaxed regulatory environment as a prerequisite for increased corporate investment and job growth. Arkansas Act 594 provides an example of this rationale. Act 594 states that the General Assembly recognizes that

> telecommunications connections utilizing unregulated technologies such as wireless and Voice over Internet Protocol greatly outnumber traditional wireline connections that remain regulated by the commission. [Thus, it] 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.[24]

The Texas deregulation legislation is even clearer, stating that the purpose of the bill is to "reduce the regulation of incumbent telecommunications companies" because of the increased competition from providers "not subject to state regulation, such as wireless communications providers and Voice over Internet Protocol (VoIP) providers." The Texas Act specifically repeals statutory language giving the state commission jurisdiction over service quality, customer service, and fair business practices, including the authority to "make and enforce the rules necessary to protect customers of telecommunications services consistent with the public interest."[25]

Idaho, Montana, and Nebraska, three states where CenturyLink is the incumbent carrier, passed deregulation bills during 2011, all premised on the level of competition in the state. In Idaho, for example, the legislature removed all tariffing requirements, building upon earlier rules ending commission oversight of basic local exchange service where "effective competition exists for basic local exchange service throughout the local exchange calling area."[26] This law also removed the requirement that ILECs file tariffs for local and intrastate services. In Montana, the legislature relaxed the rules for reviewing and granting ILEC alternate-regulation plans (AFOR).

Verizon has been the least active of the major ILECs in proposing the deregulation of its retail services, appearing to focus more on its wireless services. During 2011, deregulation bills were introduced in three states (New Jersey, New York, and Virginia) where Verizon is the primary carrier, but only Virginia passed legislation reducing commission oversight.[27] Similar to

---

[24] 2011 Ark. Acts 594 (originally SB 755), lines 26-32, available at http://www.arkleg.state.ar.us/assembly/2011/2011R/Acts/Act594.pdf

[25] Acts 2011, 82nd R.S., Ch. 98, General and Special Laws of Texas (formerly SB980), available at http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/SB00980F.pdf#navpanes=

[26] 2011 Idaho Session Law Chapter 312 (formerly S1156, An Act Amending Section 62-606, Idaho Code), available at http://www.legislature.idaho.gov/legislation/2011/S1156Bookmark.htm7

[27] The New Jersey and New York bills were still pending as of April 30, 2012.

the bills enacted in the states where AT&T and CenturyLink are the incumbent carriers, Virginia's act[28] focuses on competition as a surrogate for regulation, but the Virginia law provides a path for the commission to evaluate the success or failure of deregulation and take steps to correct problems when necessary. Under the 2011 legislation, the commission will continue to review ILEC performance and may withdraw a competitive designation in a specific area and re-impose regulation if performance falls to a level that negatively impacts consumers.

C. The 2010–2012 legislation reduces pricing and quality-of-service oversight and removes jurisdiction over broadband transport and services

The legislation enacted between 2010 and April 2012 reduces the oversight of the incumbent wireline carriers to the same level applied to competitive carriers, cable companies, and wireless providers. The bills enacted during this period make local service tariffs optional, eliminate quality-of-service requirements and penalties, eliminate or reduce the commission's power to adjudicate customer complaints (including, in some cases, complaints regarding billing accuracy and slamming), reduce or eliminate COLR and basic-service requirements, and ensure that broadband services remain unregulated at the state level. Commission jurisdiction over interconnection requirements and other wholesale activities prescribed by Sections 251 and 252 of the Telecommunications Act of 1996 is unchanged. Where commission oversight remains, as in Missouri, Indiana, and Mississippi, it is limited to the level of oversight prescribed by the FCC.[29]

1. Tariffs are required only for intrastate access, special access, and basic service

The legislation passed between 2010 and April 2012 makes tariffs optional except for basic local services (where required), intrastate switched access, and special-access services not covered under commercial contracts. The basic-local-service requirement remains in 10 of the 20 states that passed laws during this period. Where the basic-local-service requirements continue, this offering is generally defined as a single residential line, directory listing, access to operator services, and local-calling capability. Carriers must continue to file tariffs for basic local service.

In states where tariffs are optional, carriers may be required to notify customers of their service offerings and prices via their websites, bill inserts, or other means. In these states, the

---

[28] Virginia Statutes, Chapter 738, *An Act to Amend the Code of Virginia*, relating to the regulation of telecommunications services, available at http://lis.virginia.gov/cgi-bin/legp604.exe?111+ful+CHAP0738

[29] *See* the Appendix for an overview of legislation.

commissions no longer ensure the accuracy, completeness, or availability of the information provided by the carriers. [30]

The Missouri Deregulation Act is a good example of the de-tariffing included in the laws enacted in the states where AT&T is the primary carrier. The Missouri Act amends the Missouri regulations to

> allow a telecommunications company. . . . upon written notice to the commission, [to] elect to be exempt from any requirement to file or maintain with the commission any tariff or schedule of rates, rentals, charges, privileges, facilities, rules, regulations, or forms of contract for telecommunications services offered or provided to residential or business retail end-user customers[;] instead, [they] shall publish generally available retail prices for those services available to the public by posting such prices on a publicly accessible website.[31]

In states where tariffs are optional, carriers may be required to notify customers of their service offerings and prices via their websites, bill inserts, or other means. In these states, the state utility commission no longer ensures the accuracy, completeness, or availability of the information provided by the carriers, whether on their website or filed with the commission.[32] In order to ensure that the carriers in the state post this information in a timely and accurate manner, the Michigan commission has used its licensing authority to require carriers to notify the telecommunications division of updates to service plans and to certify the accuracy of the information provided on company websites.[33]

Not all states have abolished tariff filings. Carriers must continue to file retail tariffs for basic local service in Alabama, Michigan, Georgia, Virginia, and Illinois. In Virginia, the requirement to tariff retail services, including basic local service, will sunset in July 2013, although companies will continue to have the option of filing tariffs.[34]

---

[30] Some companies, for example CenturyLink in Florida and Verizon in Michigan, as well as some CLECs, have chosen to continue to file local-exchange tariffs to protect their legal rights.

[31] Missouri LR 1159S.02T (formerly HB 339), available at http://house.mo.gov/billtracking/bills111/billpdf/truly/HB0339T.PDF

[32] Some companies, for example CenturyLink in Florida and Verizon in Michigan, as well as some CLECs, have chosen to continue to file local exchange tariffs to protect their legal rights.

[33] Interview with Robin Ancona, Director of Telecommunications, Michigan Public Service Commission, March 12, 2012.

[34] Administrative Code of Virginia § 56-236(c). As of July 1, 2013, the Commission shall permit, but may not mandate, the detariffing of any or all terms, conditions, or rates for any or all retail telephone services. Available at http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+56-236

Tariffs continue to be required for intrastate switched-access services and special-access services in all states enacting legislation during this period. When it is fully implemented, the "bill and keep" language for intercarrier compensation ordered in the *2011 FCC USF/ICC Transformation Order* will effectively eliminate this requirement.[35]

2. "Deregulated" carriers are no longer subject to traditional quality-of-service metrics or penalties.

One of the key components of the deregulation legislation enacted between 2010 and April 2012 is the elimination of quality-of-service metrics and oversight. Thirteen state legislatures eliminated quality-of-service oversight as part of the legislation passed during this timeframe.

Generally, only the ILECs have been covered by quality-of-service regulation. State commissions do not have jurisdiction over the retail performance of CLECs or cable companies, so their performance is not evaluated; nor are these providers penalized for poor service to their retail customers.[36] This perceived "disparate treatment" has led the ILECs to press for legislation that exempts them from quality-of-service oversight, except in the limited case of Federal Lifeline support provided by eligible telecommunications carriers (ETCs).

Traditional retail quality-of-service measures have focused on ensuring that the circuit-switched voice network is available 99.999% of the time,[37] that service is installed without undue delay, that problems are diagnosed and corrective action taken within set time periods, and that customers can reach ILEC support agents rapidly. These measures generally include the following:[38]

1. Average installation interval in days
2. Percentage of installation commitments met
3. Out-of-service repair intervals in hours

---

[35] *See In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund,* WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-162 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*).

[36] The ILECs are generally also subject to wholesale performance measures and penalties. Because these metrics are required by sections 271/251/252 of the 96 Act, the new legislation does not eliminate them.

[37] The Bell System referred to this service level as "5 9s."

[38] The first six of these measures are reported in the FCC ARMIS reports, available at http://fjallfoss.fcc.gov/eafs7/PresetMenu.cfm

4. Repeat out-of-service calls
5. Total number of trouble reports per month per 100 lines
6. Number of consumer complaints
7. Average time to reach an operator
8. Billing accuracy

As competition from non-traditional carriers such as cable companies, over-the-top VoIP providers, and wireless has increased, the ILECs have cited the increased availability of service from multiple providers, as well as the number of competing products and services from which consumers may choose, as proof that quality-of-service regulation is no longer needed. They have argued that the ability to choose among multiple suppliers has made oversight unnecessary as a means of ensuring quality of service.

Quality-of-service regulations have been eliminated in legislation enacted in Alabama, Arkansas, Florida, Idaho, Illinois,[39] Kansas, Michigan, Missouri,[40] New Hampshire,[41] Tennessee, Texas, Wisconsin, and Virginia. Virginia's deregulation law provides that once a service has been found competitive, rules regarding billing, interest rates, service disconnection for nonpayment, and customer complaints will no longer apply, although the State Corporation Commission (SCC) may continue to track customer complaints to determine whether there are patterns that may require commission intervention or rule changes.[42] The Kansas and Tennessee acts adopt similar rules.[43]

Some states have concluded that reducing service-quality oversight would enhance economic development and encourage more telecommunications investment. Arkansas Act 594, for example, specifically ties the elimination of quality-of-service regulation to increased competition and, ultimately, to job growth.

---

[39] Illinois continues to track installation and repair metrics for companies that do not "elect" to be deregulated. *See* IL Public Act 096-0927, available at http://www.ilga.gov/legislation/publicacts/96/PDF/096-0927.pdf

[40] The Missouri Act prohibits quality-of-service requirements beyond those required by the FCC. *See* An Act to Amend Chapter 392 by Adding Thereto One New Section Relating to Telecommunications, available at http://house.mo.gov/billtracking/bills111/billpdf/truly/HB0338T.PDF. The bills enacted in Indiana and Mississippi include similar language.

[41] The New Hampshire Act applies only to small ILECs with 25,000 or fewer access lines. Legislation deregulating larger carriers is under consideration during the 2012 legislative session.

[42] Ibid.

[43] 2011 Kansas Session Law Ch. 54 (formerly SB 72), available at http://www.kslegislature.org/li/b2011_12/measures/documents/sb72_enrolled.pdf. *See also*, 2011Tennessee Public Chapter 68 (formerly SB 598), available at http://state.tn.us/sos/acts/107/pub/pc0068.pdf

> 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.[44]

Legislation in Georgia, Montana, Nebraska, and North Carolina allows the state commission to retain a minimal role in regulating quality of service. The Georgia Telecommunications and Jobs Act of 2010 reserves the commission's right to regulate quality of service only for those (primarily rural) carriers that continue to be rate regulated.[45] In Montana, carriers that adopt alternate regulation plans may not do so if the plan degrades quality of service.[46] In Nebraska, the Telecommunications Regulation Act continues to require that wireline carriers maintain quality-of-service standards.[47]

Legislation enacted in North Carolina requires carriers to provide yearly customer-satisfaction reports until 2014 to ensure that quality of service does not decline after the new rules are implemented.[48]

3. Commissions retain only limited authority for reviewing and resolving customer complaints

In states where quality-of-service regulation has been eliminated, the commission's role in responding to customer complaints regarding billing, installation, and other issues has also been diminished. Rather than adjudicate these complaints, the commission may only refer the customer to the relevant providers. This process mirrors that used for complaints regarding non-regulated suppliers like cable companies.

The 2010–2011 laws grant state commissions varying authority to provide support to customers who complain to them. At one end of the continuum, the Florida Reform Act eliminated all oversight of end-user (retail) telecommunications. Thus, the Florida PSC may no

---

[44] 2011 Ark. Acts 594 (originally SB 755), Section 1.5.b, available at http://www.arkleg.state.ar.us/assembly/2011/2011R/Acts/Act594.pdf

[45] 2011 GA Statutes O.C.G.A. Title 46 Chapter 5 (formerly HB 168), available at http://www1.legis.ga.gov/legis/2009_10/pdf/hb168.pdf

[46] Montana Session Law Chapter 263 (formerly SB 246), available at http://data.opi.mt.gov/bills/2011/sesslaws/ch0263.pdf

[47] Nebraska Revised Statutes 2011 Chapter 86-101 (Telecommunications Regulation Act), available at http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB257.pdf

[48] North Carolina Session Law 2011-52, An Act Establishing The Communications Regulatory Reform And Investment Act Of 2011, available at http://www.ncga.state.nc.us/Sessions/2011/Bills/Senate/PDF/S343v4.pdf

longer resolve individual customer complaints, including complaints about the unauthorized transfer of service from one provider to another (i.e., slamming).[49] In Florida, the responsibility for customer complaints has been passed to the Department of Agriculture and Consumer Services. That department refers customers to their carrier and/or to the FCC if appropriate. The Florida PSC has continued to track the number of complaints (now called "inquiries") received. The most recent customer complaint data in Florida shows that the rate of complaint filings has not changed since the new law was implemented in July 2011.[50]

Like Florida, in Wisconsin, the responsibility for answering and handling customer calls resides with the Department of Agriculture and Consumer Affairs, which maintains a statewide call center. Although the Wisconsin commission may no longer order investigations of customer complaints, commission staff provide customers with a name and telephone number by which to reach their providers' executive complaint offices. In addition, Wisconsin continues to track complaints to determine whether they are trending up or down and if any specific areas might require further discussion. As in Florida, the number of consumer inquiries to the commission has stayed constant despite the change to the law.[51]

In Michigan, the commission may continue to investigate and resolve customer complaints but may not fine companies for complaints that are more than two years old. Michigan, too, continues to track the number and type of complaints and will include this information in its yearly report on telecommunications competition in the state. This report will no longer be prepared after 2013.

In Virginia, the commission continues to have authority to monitor customer complaints and require companies to respond.

Removing quality-of-service oversight has created a key gap by reducing state commissions' jurisdiction over the other ancillary services tracked as part of service metrics—for example, the time required to install service or correct problems. In addition, commissions that no longer have jurisdiction over retail quality of service may no longer monitor billing accuracy and other billing issues, including the way in which partial payments for bundled local and long-distance service are applied. These state commissions may no longer address customer complaints about these issues and thus may no longer be able to protect consumers from the possibility of service shut-off without notification.

[49] The FL PSC can address slamming complaints brought by one carrier against another under its wholesale jurisdiction.

[50] Email from Dan Hoppe, Florida Public Service Commission, 1/18/12.

[51] Discussion with Brian Rybarik, Wisconsin Public Service Commission, 3/13/12.

4. Commissions may not regulate broadband services, including VoIP

Each of the laws deregulating telecommunications passed between 2010 and April 2012 includes language removing commission jurisdiction over broadband infrastructure, VoIP, or any new or enhanced services that may use a broadband platform. However, the laws do require providers of these services to contribute to the state and federal USF funds and meet 911 requirements.[52] In general, the legislation includes three primary rationales for the decision not to regulate broadband:

- Broadband is an interstate service and thus subject only to FCC jurisdiction;
- Broadband is not a telecommunications service and therefore is not subject to common-carrier regulation; and
- Broadband is an emerging service, and regulation might reduce its growth.

For example, the Florida Reform Act specifically exempts VoIP from PSC jurisdiction or state business laws.[53] Similarly, Georgia's Telecommunications Jobs Act (2010) eliminates PUC jurisdiction over "the setting of rates or terms and conditions for the offering of broadband service, VoIP, or wireless services." The North Carolina Communications Regulatory Reform and Investment Act of 2011 uses similar language, removing the commission's authority to "impose requirements regarding terms, conditions, or availability of services, regardless of technology." And in Virginia, the legislation specifically defines VoIP as "neither a local nor an interexchange service" for the purposes of regulation.

Laws adopted in Maine and Wisconsin specifically address language in the prior statutes that may have given the commission the opportunity to exercise some oversight of VoIP and cable voice services.

In 2010, the Maine Commission ruled in its *Comcast* decision that cable voice was a telecommunications service and thus subject to its regulatory jurisdiction.[54] Maine's 2011 Resolve to Develop a Plan to Reform Telecommunications Regulation reversed this decision, stating that VoIP may not be regulated as a telecommunications service under Maine statutes,

---

[52] The providers of over-the-top/nomadic VoIP are not subject to these requirements.

[53] It does, however, list VoIP as an "equivalent service" when determining the level of local exchange competition in an exchange.

[54] Maine Docket No. 2008-421, October 27, 2010, *PUBLIC UTILITIES COMMISSION Investigation into Whether Providers of Time Warner "Digital Phone" Service and Comcast "Digital Voice" Service Must Obtain Certificate of Public Convenience and Necessity to Offer Telephone Service*

regardless of previous decisions by the PUC (or the courts).[55] We discuss the Maine reform plan and the subsequent act in more detail in Section III.

Wisconsin's new law changes the definition of telecommunications to remove language relating to data. Prior to the enactment of Act 22, Wisconsin statutes defined "telecommunications service" as

> the offering for sale of the conveyance of voice, data, or other information at any frequency over any part of the electromagnetic spectrum communication, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication regardless of the technology or mode used to make such offering.[56]

Act 22 changes the prior definition by removing the word "data" and specifying that telecommunications service does not include cable service or broadcast service.[57]

5. Carrier-of-last-resort (COLR) provisions have been modified or, in some cases, eliminated entirely.

The incumbent local exchange carriers (ILECs) have long chafed under the requirement that they serve as the "carrier of last resort" (COLR) in areas where other companies may not choose to provide service. Although most ILECs have been compensated under the federal universal service program for bringing service to rural locations, they have sought exemption from the requirement to build new service in what they consider high-cost areas or to provide service to all purchasers at the same price. As competition has increased from carriers not subject to the COLR requirements, the ILECs have pressed for legislation on this subject at the both the state and federal levels.

In the AT&T region particularly, the legislation enacted between 2010 and April 2012 in several states relieves ILECs of their COLR obligations under two circumstances: first, where a community has granted exclusive rights to provide service to a competitive supplier; and second, where competition offers consumers a choice of suppliers with reasonably comparable service. In areas where the ILEC has been relieved of its COLR obligations, it may no longer claim USF support.

In Missouri, for example, the new statute provides ILECs with relief under both of these circumstances.[58] First, the act allows the ILEC to drop its COLR obligations where a new

---

[55] *Maine Resolve, To Direct the Public Utilities Commission To Develop a Plan To Reform Telecommunications Regulation*, available at http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1075&item=3&snum=125

[56] Wis. Stat. § 196.01 (2010).

[57] Wisconsin Act 22, available at https://docs.legis.wisconsin.gov/2011/related/acts/22

development has contracted with a competitive supplier to provide service to all its residents. Second, the act allows the incumbent to notify the commission that it will drop COLR obligations in two specific areas of the state where competitive choices are widely available (St. Louis County, the city of St. Louis, and Kansas City).[59] Under the Missouri legislation, a carrier that has elected to drop its COLR obligation is no longer required to provide basic local or basic interexchange (local toll) service to all customers. If the carrier chooses to retain its COLR obligations, however, it may provide that service via any technology it wishes, including VoIP, wireless, or any other technology.

In Michigan, the 2011 Telecommunications Act relieves carriers of COLR requirements in areas where there is one additional provider, regardless of the competing company's size or the technology with which it provides service.[60] Similarly, in Wisconsin, carriers may apply to the commission to be relieved of their COLR obligations if competitive service is available—again, regardless of the type (or quality) or that service. In North Carolina, ILECs are relieved of their COLR obligations where they have chosen alternative regulation and, therefore, no longer accept state USF funds. Other states have also chosen to retain their COLR requirements under certain circumstances. In Kansas, as in Missouri, COLR obligations are removed only in urban areas.[61] And in Alabama, ILECs continue to have COLR requirements but do not have to extend wireline service to requesting customers if the cost of that extension is more than $8,000.00 or if the state USF has insufficient funds to cover the cost. The ILEC may provide line extensions using any technology, including wireless, where wireline extensions prove too costly.[62]

Despite the FCC's decision not to preempt state COLR requirements in the *ICC Transformation Order*, large ILECs like AT&T and Verizon have continued to lobby for an end to universal service and COLR requirements. For example, AT&T used its reply comments in the USF docket (WC Docket 10-90) to press the FCC to remove its eligible telecommunications carrier (ETC) requirements and COLR obligations in all areas where it does not bid for or is not granted USF support, regardless of legislation in those states. In its filing in this docket, AT&T recommends that carriers that do not receive high-cost support should not be designated as Eligible Telecommunications Carriers (ETCs), because "there simply is no justification for blindly continuing legacy ETC and similar obligations, particularly when doing so would violate

[58] Missouri LR 1159S.02T (formerly HB 339), available at http://www.house.mo.gov/billtracking/bills111/billpdf/truly/HB0339T.PDF

[59] Ibid.

[60] Michigan Act 58, available at http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2011-PA-0058.pdf

[61] 2011 Kansas Session Law Ch. 54-2011 (formerly SB 72), available at http://www.kssos.org/pubs/sessionlaws/2011%20Session%20Laws%20Volume%201.pdf

[62] Alabama Assigned Act No. 2011-622, available at http://e-lobbyist.com/gaits/text/324571

fundamental precepts of universal service policy such as competitive neutrality and the provision of adequate support."[63]

6. Wholesale obligations remain unchanged

The deregulation legislation enacted between 2010 and April 2012 preserves state-commission jurisdiction over wholesale services as described in sections 251/252 of the 1996 Telecommunications Act. The new laws retain the state commissions' authority to arbitrate interconnection agreements, resolve carrier-to-carrier disputes, and enforce the provisions of the wholesale quality-of-service plans negotiated as part of the 271 process. Indeed, as their responsibility for retail issues contracts, state commissions may see their role as arbiter of wholesale issues expand. For example, in Florida, which can no longer adjudicate complaints by customers over retail slamming, the commission can resolve slamming issues that are part of a carrier-to-carrier dispute.[64] State commissions may also see their wholesale role expand as carriers begin to modify their interconnection agreements to include arrangements for the origination and termination of Internet Protocol (IP traffic) and other issues related to VoIP services.

Some state deregulation legislation has also addressed the withdrawal of carriers from the marketplace and the question of commission oversight of mergers and acquisitions. Indiana, for example, repealed the Indiana Regulatory Utility Commission's mandatory obligation to name a successor COLR if the existing carrier exits the market, although the commission retains the emergency right to open a proceeding to identify and declare a new carrier if required.[65] Legislation pending in New Jersey would allow the state commission to reimpose regulatory oversight in specific areas if they became non-competitive.[66]

[63] AT&T Reply Comments, *Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking, ("USF-ICC Transformation Order")*, Docket WC 10-90, February 17, 2012.

[64] Florida Regulatory Reform Act, available at http://www.flsenate.gov/Session/Bill/2011/1231/BillText/er/PDF

[65] 2011Indiana P.L. 8-2012 (formerly House Enrolled Act 1112), available at http://www.in.gov/legislative/bills/2012/HE/HE1112.1.html

[66] S830 New Jersey Telecommunications-Cable Television Deregulation Ensuring Consumer Protection Act, available at http://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=S830

The North Carolina Communications Regulatory Reform Act removes commission oversight of mergers and acquisitions, as well as rules regarding the discontinuance of service.[67] Virginia's act also removes merger oversight, except regarding the "management capabilities" of the successor company.[68]

All the legislation passed over the period discussed in this paper preserves the ILECs' obligation to interconnect and state-commission jurisdiction over wholesale matters. Nevertheless, a number of ILECs have been seeking other venues to change or remove these carrier-to-carrier requirements. For example, in their comments in the FNPRM on IP Interconnection, both AT&T and Verizon have suggested that once carriers begin to provide the majority of their services via broadband rather than traditional TDM switching, they would become merely another "broadband supplier" and would no longer be required to meet the obligations of Sections 251 and 252.[69]

III. Commissions Are Responding to Deregulation by Consolidating Functions, Revising Rules, and Seeking Stakeholder Input on New Regulatory Processes

State commissions have responded to changes in telecommunications regulation by consolidating functions, implementing new regulations, and proactively recommending the way in which legislation should be crafted. This section reviews the ways in which the Florida, North Carolina, Maine, and Colorado commissions have responded to the reduced regulation required (or proposed) by the acts passed in their states between 2010 and April 2012 or proactively worked with state legislatures to draft legislation.

A. The Florida Public Service Commission reorganized to meet the requirements of the Florida Telecommunications Reform Act

The Florida Regulatory Reform Act became effective in July 2011, but the Florida PSC began to make the changes necessary to implement its reduced jurisdiction several months earlier.[70] The commission reviewed open dockets to determine the impact of the new law,

---

[67] 2011 N.C Laws No. 52, An Act Establishing the Communications Regulatory Reform and Investment Act of 2011, available at http://www.ncga.state.nc.us/Sessions/2011/Bills/Senate/HTML/S343v4.html

[68] Virginia Statutes, Chapter 738, An Act to Amend the Code of Virginia, Relating to the Regulation of Telecommunications Services, available at http://lis.virginia.gov/cgi-bin/legp604.exe?111+ful+CHAP0738

[69] *See* AT&T Reply Comments 3/30/12, available at http://apps.fcc.gov/ecfs/document/view?id=7021905424, and Verizon Reply comments, *Connect America Fund*, *et al*., *Report and Order and Further Notice of Proposed Rulemaking* ("*USF-ICC Transformation Order*"), 3/30/12, available at http://apps.fcc.gov/ecfs/document/view?id=7021905487

[70] Florida Regulatory Reform Act, available at http://www.flsenate.gov/Session/Bill/2011/1231/BillText/er/PDF

determined how to move the responsibility for taking customer complaints from the PSC call center to the Department of Consumer Services and Agriculture call center, and examined how best to combine functions to reduce cost where possible.

The Florida Reform Act removed the commission's (already) limited jurisdiction over interexchange (long-distance) providers (IXCs), wireless ETCs,[71] and operator-services providers. It made tariff filings optional, eliminated the commission's authority over retail service quality, and eliminated its ability to adjudicate individual customer complaints.[72] The commission retained responsibility for designating wireline ETCs and for functions delegated to the states by federal statute and the FCC, including arbitrating interconnection agreements and resolving carrier-to-carrier disputes.

Immediately after the Florida Reform Act passed in June 2011, the commission began to realign its staff and processes to incorporate the requirements of the new law. First, the commission examined the functions it performed and consolidated them in a single division. The commission also reviewed the dockets pending and closed those that were no longer under their jurisdiction because of the new law. Out of 124 dockets open in June 2011, 46, or 37%, related to IXCs were closed as a result of the new law. Commission staff also began training the Department of Agriculture and Consumer Affairs call center on procedures for dealing with customer complaints regarding telecommunications carriers, including providing them with contact numbers for the carriers. Finally, to ensure that customers understood the changes taking place, the commission updated the information on its website to notify customers of the change to the commission's jurisdiction.

To reflect the concurrent reduction in PSC workload, the commission reduced the Regulatory Assessment Fee (RAF) charged to telecommunications companies.

B. The North Carolina Utilities Commission modified its rules to address the changes required by deregulation legislation

The North Carolina Regulatory Reform and Investment Act of 2011[73] allows carriers to elect alternate regulation under the new terms provided by the act. Like the Florida Reform Act, North Carolina's reform act removes commission jurisdiction and oversight of retail services, including "conditions, rates, or availability, regardless of technology."[74] The act also eliminates

---

[71] The commission retains some limited jurisdiction over wireline ETCs.

[72] The commission retains jurisdiction over carrier-to-carrier disputes, including slamming complaints brought by carriers against other carriers on behalf of their customers.

[73] 2011 N.C Laws No. 52, The Communications Regulatory Reform and Investment Act of 2011, available at http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S343v2.pdf.

[74] Ibid. G.S. 62-133.5(l)(1)(a) available at http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S343v2.pdf

the requirement to tariff services and all regulation of the rates charged by electing carriers. Under the new act, a carrier may opt out of COLR obligations and/or the requirement to continue providing stand-alone basic residential lines. Electing carriers must forego any state USF funding. Prior to the reform act, carriers were required to report to the legislature yearly on the affordability and quality of their services. The act relieves electing carriers of this obligation after three years (in 2015).

The commission retains jurisdiction over intrastate switched-access rates and intercarrier compensation rates, certification requirements for long-distance providers, and payphone operators, as well as telecommunications relay service (TRS). The commission also regulates Lifeline and Linkup programs (subject to federal requirements); USF funding; numbering resources; and wholesale rates, terms, and conditions, as well as intercarrier agreements defined under sections 251 and 252 of TA96. Unlike Florida, the North Carolina Reform Act preserves the commission's authority to resolve user complaints.

The Act became effective on April 26, 2011. The North Carolina Commission opened a docket in May to adopt the changes necessary to revise the rules governing the certification and oversight of carriers choosing alternate regulation.[75] The docket sought recommendations from staff and from affected carriers on the changes to North Carolina statutes and commission rules required by the new law. As part of this docket, commission staff compiled a matrix showing how and whether component of the act would apply to electing companies. In addition, the commission's order in this docket created a new form for applicants to request certification as electing carriers at the same time as they request an operating certificate (CPCN).[76] The commission used the docket to work with stakeholders to create this form.

By seeking input from key stakeholders, the commission ensured that all carriers understood and would abide by the new legislation. This review also allowed the commission to ready itself for its new role.

C. The Maine Public Utilities Commission recommended changes to the regulatory process in advance of new legislation

The process for crafting the deregulation legislation enacted in Maine in 2012 provides an example of the way in which state commissions might work with their state legislatures to influence the ultimate way in which this legislation is written. Prior to proposing legislation deregulating telecommunications in the state, the Maine legislature specifically tasked the Maine

---

75 NC PUC Docket P-100, Sub 165a.

76 *Order Addressing the Public Staff's Subsection (l) Report and Adopting an Amended CLP Certification Application Form*, available at http://ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=GBAAAA52311B&parm3=000135545. *See* N.C. Gen. Stat. § 62-133.5(l)).

PUC with proposing a plan for accomplishing the process of deregulation.[77] The legislature directed the commission to draft a plan based on four legislative findings:

1. A plan for regulatory reform is needed because of the competition that exists in the telecommunications industry, which continues to grow and which the legislature seeks to promote.

2. Regulatory burdens should be the minimum necessary to protect the public welfare, and, to the maximum extent practicable, the regulatory burdens on different modes of providing telecommunications services should be the same.

3. Regulatory reform may not result in any provider being required to submit to a net increase in regulatory burden. This does not preclude reforms that establish options under which a provider may choose for its own benefit to take on new regulatory obligations (such as provider-of-last-resort obligations) or reforms that replace existing regulatory requirements with more appropriate requirements, as long as no provider is required to submit to a net increase in regulatory burden.

4. Regulatory reform may not relieve any provider from complying with wholesale obligations under either state or federal law, including but not limited to those relating to access to network elements, interconnection, intercarrier compensation, pole attachments, switched access, and any other obligations established under the federal Communications Act of 1934, as amended, and must preserve any related rights of any provider under that Act.[78]

After staff review and informal discussions with industry, other key stakeholders, and consumer groups, in December 2011 (as required by the legislature), the commission proposed a plan to begin to deregulate telecommunications in Maine. The plan addressed the legislature's finding that competition may substitute for regulation where there are sufficient opportunities for customers to select an alternate carrier by reducing the oversight of bundled wireline services, removing tariffing requirements, eliminating oversight of service quality (with the exception of narrowly targeted standards for providers of last resort), and clarifying that broadband services are not subject to commission jurisdiction.

---

[77] *Resolve, To Direct the Public Utilities Commission To Develop a Plan To Reform Telecommunications Regulation* (H.P. 1075 – L.D. 1466), http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1075&item=3&snum=125

[78] Ibid.

The Maine Act to Reform Telecommunications Regulation, which became effective in April 2012, largely follows the plan recommended by the commission.[79] Under the new legislation, the commission retains oversight over carrier certification and continues to manage the numbering process for all carriers. The act requires all providers, including nomadic VoIP providers, to contribute to the Maine USF fund (contributions by VoIP providers are currently voluntary), and requires all voice-service providers be certificated by the commission, regardless of technology. In addition, the commission continues to oversee the state Universal Service Fund (USF), enforce merger commitments, certify ETCs, resolve intercarrier disputes, arbitrate interconnection agreements, and manage other wholesale processes as required by sections 251 and 252 of TA96.[80]

As we noted earlier, one of the overarching goals of the proponents of deregulation appears to be the elimination of COLR requirements. ILECs like AT&T and Verizon have argued that COLR requirements are a vestige of monopoly regulation and are no longer required when consumers can choose among multiple products and carriers (including wireless and over-the-top VoIP carriers). As the Maine commission pointed out in its report to the legislature,

> AT&T simply does not believe that POLR service is necessary. In the view of AT&T, it is self-evident that the market is already sufficiently competitive throughout the entire state to remove any concerns there may be for those who prefer, or can only afford, the most basic level of local service.[81]

The Maine commission's reform plan attempted to find a middle ground between the total deregulation sought by AT&T and the need to preserve basic service for those who need it. The plan and the legislation enacted in 2012 recognize that one size of telecommunications service does not necessarily fit all and thus retains COLR obligations for one carrier in each exchange, while reducing or eliminating regulation over other retail services. The legislation defines a set of COLR requirements that are specific and limited, and that, at least initially, apply only to the ILEC.

Under the new legislation, the COLR must offer all customers in exchanges where it has been designated as the basic service provider a basic voice service that meets specific quality-of-

---

[79] The law leaves two questions open for later action: the process for developing benchmarks for basic service rates and the extent to which the contribution base for state universal service support should be broadened. Although the commission's proposal suggested that contributions to the state USF be de-averaged, the law does not address this issue. *See* Public Law, Chapter 623, LD 1784, 125th Maine State Legislature, An Act To Reform Telecommunications Regulation, available at http://www.mainelegislature.org/legis/bills/bills_125th/chappdfs/PUBLIC623.pdf

[80] The PUC submitted its plan on December 31, 2011. The bill formally proposing the plan (H.P. 1309) was enacted on April 4, 2012.

[81] *Maine Resolve, To Reform Telecommunications Regulation*, p. 71, available at http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1075&item=3&snum=125

service parameters and performs specific functions. COLRs must continue to file tariffs for basic service and remain under rate review. The commission retains jurisdiction only over customer complaints about basic COLR service.

Like the language in many of the other deregulation laws, the Maine law defines basic voice service narrowly as single-party, voice-grade access to the PSTN via a wired connection (presumably, a traditional landline connection); local usage within a specific calling area; the ability to connect to a long-distance provider (but not bundled service); access to 911, directory assistance, and operator services; and the ability to limit toll calls. Because the commission views COLR service in the context of health and safety, its plan and the subsequent legislation requires the COLR to offer line-powered voice service—that is, service that draws electricity from the central office and will, therefore, remain available during commercial power outages.[82] Because circumstances may change over time, the law provides a process whereby carriers may petition the commission to be relieved of their obligation in areas where competition becomes sufficient to ensure universal service at reasonable rates. Carriers may also petition to pass the COLR requirement to another company.

IV. What Options Do State Regulators Have for Responding to "Deregulation Fever"?

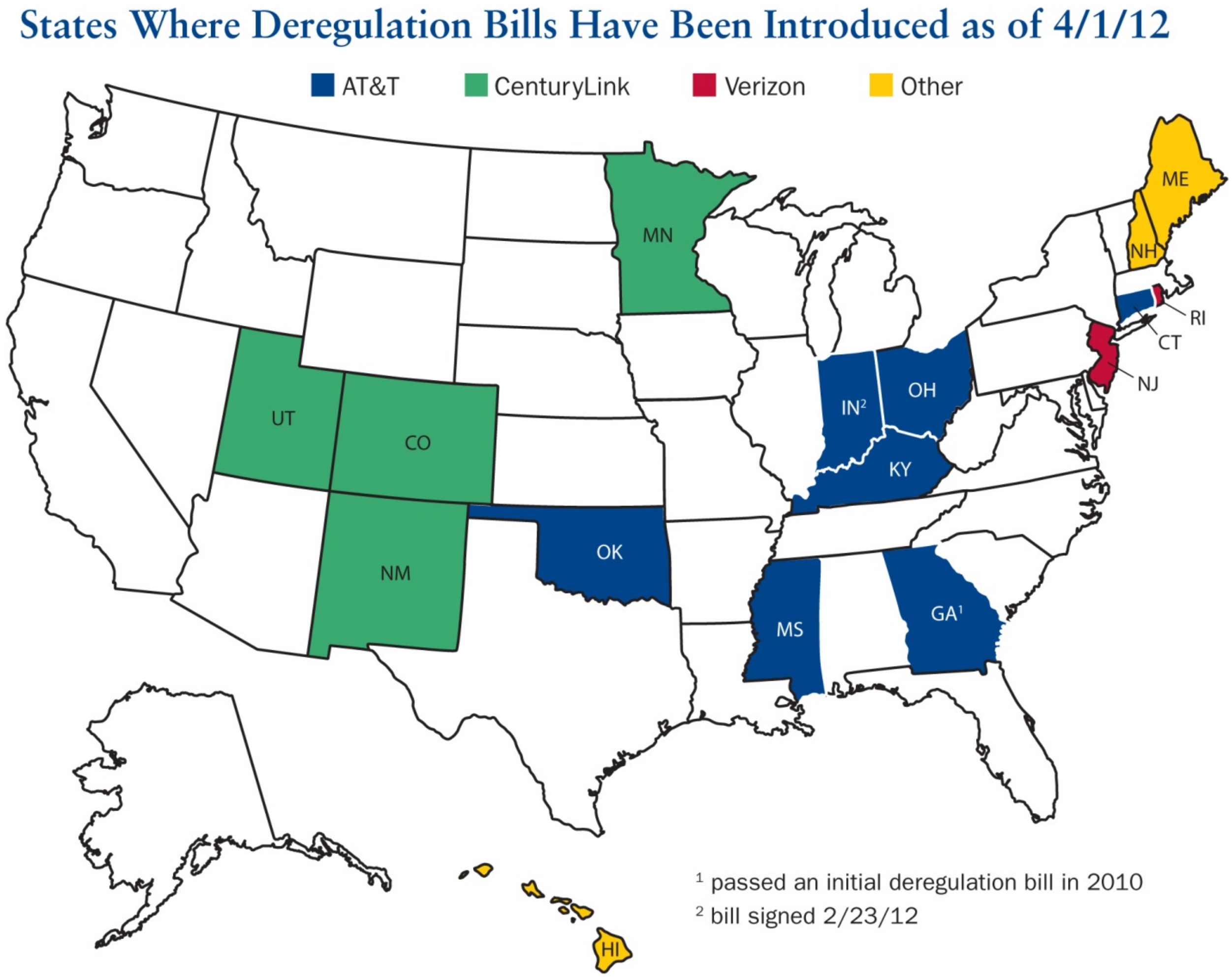
Product substitution; increased competition; new, unregulated entrants; and intense industry lobbying resulted in state legislatures' reducing or completely withdrawing regulation of telecommunications providers in 20 states between 2010 and April 2012. Deregulation fever shows no signs of subsiding. By the publication date of this paper, legislatures in 14 additional states were considering (or had already passed) legislation to reduce or eliminate telecommunications regulation, and additional bills will undoubtedly be proposed before the end of the year.[83]

Figure 4 shows the states where legislation is pending as of April 30, 2012. The key features of this legislation appear in the chart in the Appendix.

[82] This requirement may preclude cable providers or other VoIP carriers that do not provide line-powered service from providing COLR service.

[83] *See* Appendix. Deregulation bills are pending in CA, CT, KY, MN, NH, NJ, NM, NY, OH, OK, RI, UT, and VT. The bill pending in CO was withdrawn by its sponsors in May 2012.

Figure 4



How might state commissions respond to this deregulatory fever? After a state has deregulated, what tools remain for identifying problems caused by gaps in utility oversight, and what should commissions do with any data they do collect? This section presents options for understanding and addressing the changes to commission jurisdiction identified by a review of the legislation passed between 2010 and April 2012 and the experiences of states that have implemented these new laws. In states that have not yet adopted new statutes, these options may help regulators to shape pending legislation in a way that will benefit both consumers and industry. In states where deregulation laws have already taken effect, these options may help regulators ensure that consumers continue to obtain service at reasonable prices and with the support they need, even outside the commission's traditional adjudicatory role.

A. Understand the rationale for deregulation

Understanding the goals of industry and the state legislatures in recommending deregulation will help regulators respond to the new policies proactively and effectively.

Large carriers such as AT&T and Verizon, as well as smaller ILECs like FairPoint, have focused on deregulation as a means of leveling the playing field among carriers (and perhaps recouping some of their line losses) by eliminating what they see as disparate rules for incumbent providers and competitive suppliers. For example, incumbent carriers have long complained that they alone (and not their competitors, including the cable companies) have been subject to quality-of-service standards, tariffing requirements, pricing oversight, and COLR obligations. These carriers argue that increases in competition make COLR requirements unnecessary, that the cost of supporting basic wireline service has increased where customers have moved to other carriers, and that the potential decommissioning of the circuit-switched network should compel state legislatures to remove or loosen commission oversight of their behavior. For the large carriers, deregulation legislation simply means treating all carriers equally. At the same time, interconnected VoIP carriers and cable companies have enjoyed a fairly "regulation free" existence and do not want to take on what they perceive as the "onerous" restrictions applied to the wireline providers, particularly in such areas as service quality and pricing.

State legislators have agreed with the incumbents' "equality of regulation" arguments. As the Texas Act states,

> Communications providers, including providers not subject to state regulation, such as wireless communications providers and Voice over Internet Protocol providers, have made investments in this state and broadened the range of communications choices available to consumers. To encourage and accelerate the development of a competitive and advanced telecommunications environment and infrastructure, rules, policies, and principles must be reformulated to reduce regulation of incumbent local exchange companies, ensure fair business practices, and protect the public interest.[84]

State statutes also cite an increase in jobs, competition, and "innovation" as a key benefit from deregulation.

Other states, such as Maine and Missouri, have considered the potential impact on their citizens of completely withdrawing all regulation and have carefully crafted their deregulation laws to protect those who cannot (or will not) take advantage of competitive services. These states appear to have recognized that competition by itself may not be sufficient to ensure that service is universally available to all that need it. They have addressed the potential conflict between complete deregulation and universal service by retaining jurisdiction over basic service

[84] Acts 2011, 82nd R.S., Ch. 98, General and Special Laws of Texas (formerly SB980), available at http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/SB00980F.pdf#navpanes=

in specific circumstances or locations, particularly the more rural portions of the incumbent's territory.

Maine's Plan to Reform Telecommunications Regulation speaks directly to the conflict between competition and universal service. The plan points out that although competition has brought new services and competitors to large areas of the state, many customers continue to rely on the "simple, basic service that has historically been provided by traditional wireline carriers."[85] Based on the commission's recommendation that basic service continue to be available throughout the state, the Maine law requires that the incumbent carrier continue to serve as the provider of last resort and offer a basic local-service product to all who request it. To assure that the POLR can continue to meet this requirement, the law restructures the Maine USF to allow incumbent carriers to draw support from this fund when necessary.

Missouri's legislation takes a different path to ensure that service remains universally available. The Missouri law withdraws COLR requirements only in specific areas of the state where widespread competition makes service both universally available and affordable.

Finally, while the laws enacted between 2010 and April 2012, make significant changes to the state commissions' jurisdiction over *retail* telecommunications services, they leave the jurisdiction over *wholesale* services largely unchanged. Wholesale telecommunications services and carrier-to-carrier relations are largely governed by the Telecommunications Act of 1996, which delegates the responsibility for arbitrating contracts between carriers and resolving disputes between carriers to the states. Thus, state legislatures have not limited state jurisdiction in this area. Indeed, state commissions may see more work in this area, as IP interconnection and questions about intercarrier compensation become more prevalent.

By keeping this information in mind, regulators will be poised to work with state legislators, industry, and other interested parties to ensure that new legislation does not disadvantage consumers or competitors while leveling the telecommunications playing field.

B. Identify potential areas of concern and opportunities for revisions

As more states deregulate retail telecommunications completely, regulators will identify gaps in utility oversight that could harm consumers in the long term. These gaps may include (among others):

- pricing questions/issues that arise because services are no longer tariffed, and information on utility websites may not be accurate;

- rate increases in states where basic service is no longer regulated;

[85] *Maine Resolve*, p. 38, available at http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1075&item=3&snum=125

- fewer competitive choices, as companies merge and select relatively narrow service areas;
- reduced service quality, as carriers begin to neglect and ultimately abandon the existing copper network in favor of broadband services;
- service abandonment/withdrawal without notice in states that no longer have explicit authority over carriers limiting or cancelling specific services or leaving the state completely without notice[86]; and
- limited broadband availability or varying service quality depending on a customer's location.

Commissions have some tools available to identify these gaps and work with the state legislature and industry to close them. One such tool is a state-level report on competition and service availability. These reports may also include data on the number and type of customer inquiries or complaints received by the commission, information on quality-of-service issues as they apply to basic service and ETC offerings, and data on wholesale disputes and metrics. This data can be used to monitor changes caused to service quality as a result of limitations on commission jurisdiction.

For example, the Florida and Michigan telecommunication reform laws continue the requirement that the commission prepare a yearly report on the status of telecommunications competition. These reports will use data provided by carriers to track changes in the level of competition in the state, including competitors that enter or leave the area. This data could also be used to provide a picture of the locations where competition has been so reduced that regulation may again be necessary. The legislation proposed in Colorado includes a yearly review of competition in order to identify areas where COLR requirements are still necessary because competition is not sufficient to ensure universal service.

A second tool available to commissions is data on service quality and complaints. Commissions that retain jurisdiction over the performance of basic service providers and ETCs can use reported quality-of-service data to assess providers' overall performance. Where providers are not providing satisfactory basic service, this reduction in service quality may also reflect a lowering of quality for customers purchasing other services that use the same infrastructure. For this reason, commissions investigating the quality of basic service may be able to use those findings to work with carriers to improve service overall. Similarly, while some commissions can no longer act on customer complaints, they can continue to record data on the calls they receive and pass this data along to those that can help, such as the state attorney general, the better business bureau, or the Federal Trade Commission.

[86] Only Indiana appears to have addressed the question of naming a replacement carrier if the incumbent carrier decides to abandon specific areas or if the failure of a competitive carrier leaves an area without competitive choice.

Taken together, these tools may help regulators continue to support consumers, identify problem areas, recommend improvements to the law, and ensure that quality telecommunications services remain available to all.

C. Work with state legislators and industry to resolve issues

In states where legislation is still pending or has not yet been drafted, commissions may address the question of deregulation proactively by opening a discussion with the legislature to propose and help craft legislation that is appropriate to the state's current or potential level of competition and the needs of its citizens. As we discussed in Section III, in response to a legislative mandate to limit telecommunications regulation, the Maine Plan to Reform Telecommunications provided the state legislature with a draft bill that responded to the key reform initiatives proposed by industry, consumers, and consumer advocates. By addressing the issue of deregulation proactively, the state commission was able to craft a plan that provided key input to the final decision. This resulted in legislation that includes protections for both basic service and COLR responsibilities.

In Colorado, the commission has sought comments and proposals from key stakeholders on the ways in which telecommunications regulation might be reformed as an aid in the drafting of the bill pending in the Colorado legislature. The commission has also met with the legislature to explain the telecommunications competitive landscape and consumer needs and protections.

The Colorado legislature first began considering telecommunications deregulation in 2010. The commission opened a docket to study the status of telecommunications availability and competition in Colorado.[87] The docket aims to identify policies necessary "to promote a competitive marketplace while protecting and maintaining the wide availability of high-quality telecommunications services."[88] The commission established a telecommunications advisory group to inform it of technological and marketplace advancements; it will use the findings from the docket to determine where there is enough competition to relieve carriers of COLR responsibilities and to determine how the Colorado High Cost fund should be modified in light of increased competition. Commission staff provided a preliminary report to the legislature in March 2012.[89]

---

[87] Colorado PUC Docket No. 10M-565T, *In the Matter of the Creation of a Telecom Policy Advisory Group for the Purpose of Informing the Commission on Current Advancements in Telecommunications Technology and the Telecommunications Marketplace Pursuant to § 40-15-101*, C.R.S., August 2010.

[88] Ibid.

[89] 3/23/12 CIM Presentation - Staff Preliminary Readout - Telecom Providers Serving Colorado, available at https://www.dora.state.co.us/pls/efi/efi_p2_v2_demo.show_document?p_dms_document_id=150805&p_session_id=

The Colorado legislation was withdrawn in May 2012. If it had passed as written, the bill would have limited commission oversight to basic service provided in areas without "sufficient competition." The draft bill defined geographic areas without sufficient competition as those areas where customers do not have a choice of "at least five providers, including wireline, CMRS, satellite, and fixed and nomadic VoIP providers that offer basic service or its functional equivalent."[90] Only one satellite provider and one nomadic VoIP provider may be counted toward the competitive threshold. Therefore, the draft bill would have required at least three providers (for example, a wireline carrier, a cable company, and a wireless carrier) in an area before it could be declared competitive. The commission has worked with industry to try to identify the areas where competition does not provide adequate protection for consumers and where basic service may still be required. Had the act passed as written, the commission would have retained authority over pricing, customer complaints, and quality of service only in areas without sufficient competition. As proposed, the act would also have eliminated COLR requirements in competitive areas.

Opening a dialogue with legislators, consumers, carriers, and other key stakeholders can give regulators the means to provide input into both the drafting of new legislation and the way in which that legislation will be implemented. As Maine and Colorado have done, state commissions who choose this option should focus on the most critical issues facing state consumers, including COLR obligations, quality of service for those customers who may not have a choice of multiple carriers and services, and resolving complaints for consumers that cannot respond to poor service by "walking with their feet."

V. Summary

Judging from the current behavior of carriers seeking changes to telecommunications jurisdiction, deregulation fever will not subside. As consumers adopt new and different services in lieu of traditional landline telecommunications and carriers move from circuit-switched voice service to broadband-enabled communications provided over cable and wireless connections, state legislatures will continue to examine the necessity for traditional telecommunications regulation. Commissions may help the legislature to understand the potential risks as well as the rewards of reducing or eliminating these regulations, so that new legislation will limit commission jurisdiction and eliminate the requirements for basic voice telephone service and COLR obligations only where customers will not be negatively affected. As the deregulation process continues and expands, state commissions may face the key questions of how to work with industry and legislators to craft deregulation legislation that reflects the changes in the industry, while at the same time protecting those consumers whose location or circumstances

[90] CO SB 157, The Telecommunications Modernization Act of 2012, available at http://e-lobbyist.com/gaits/text/613925. The term "Nomadic VoIP" refers to services that utilize broadband facilities provided by others. Nomadic VoIP service users can move their service from one location to another simply by plugging their VoIP telephone into a broadband Internet connection wherever they are located. SB157's sponsors withdrew the proposed legislation in May 2012.

make well-defined, low-cost basic telecommunications service a health and safety requirement rather than a luxury.

This paper offers regulators facing limitations in jurisdiction insight into the way in which their states may be affected by these changes by reviewing the laws passed over the last two years, as well as some bills currently pending. By doing so, we have provided commissioners, commission staff, and industry with the background necessary to see how other states are approaching this sometimes daunting task and to craft their own plans for meeting consumer needs without hampering innovation and change. Finding creative ways to match utility goals with public policy needs is a challenge. Going forward, commissions should keep in mind the following questions as they work with all stakeholders—legislators, industry, and consumers—to craft the best legislation possible.

1. How should "basic service" be defined for the 21st century and beyond? Who needs it? Where are they located? Under what conditions? Why?

   The Maine proposal is a good example of the way in which a commission has proposed a carefully crafted proposal for basic service and COLR requirements where they are most needed.

2. Does the proposed legislation include sufficient tracking mechanisms to identify areas where competition is no longer sufficient to prevent predatory behavior?

   As we have pointed out, states that retain the ability to collect data and prepare reports for the legislature on competition, service quality, and billing trends may continue to have the data available to make these judgments.

3. Does the proposed legislation include measures to prevent backsliding?

   Products and providers change; competitors come and go. Good legislation will include language that will allow state commissions to assess the level of competition in areas previously deemed competitive and reinitiate oversight where required.

Appendix

Enacted and Pending Telecommunications Legislation by State