

Stanford Levin
Emeritus Professor of Economics
Southern Illinois University Edwardsville

Co-Author(s):

Stephen Schmidt, Director, Regulatory Policy and Chief Regulatory Legal Counsel, TELUS Communications Company

**After Telecom Competition:
Is There Anything Left for Regulators To Do?**

Over the last quarter century, academics, industry participants, and government regulators and policy makers have directed enormous financial and intellectual resources to establish competitive entry across all services in telecommunications. With that task substantially achieved in many countries, and monopoly's horizon steadily shrinking, crucial questions must now be confronted. These include the following.

- (1) What are legitimate policy goals for government to be pursuing after the advent of competition?
- (2) What policy goals should now be left to the market or to non-sector-specific regulation, i. e., to laws of general application such as antitrust laws?
- (3) For those goals that will still be pursued with government intervention, what is the optimal mix of tools for accomplishing these goals? In particular, what is the right mix of ex post and ex ante measures? Are there new ways of doing old things – for example by the substitution of principle-based ex ante approaches for rule-based ex ante approaches?

These questions are posed in the context of the North American telecommunications industry. Broadly speaking, two market paradigms present themselves in North America. On the one hand, there are urban areas that have generally become, or have the capacity to become, competitive across most services. On the other hand, there are some rural and remote areas in which competition has not developed, and may not develop, to the same extent for all services – or perhaps not at all for some services. The most obvious example of this is local exchange telecommunications service, including voice and data, in some rural and remote areas.

Contrasting market conditions in urban and rural areas suggests different requirements across the spectrum of possible government interventions (technical, economic and social). Technical regulation, to ensure interconnection between providers, appears to be an enduring requirement in both urban and rural areas. However, it is possible that traditional, highly prescriptive ex ante approaches to interconnection may no longer be optimal in areas transformed by competitive entry.

Economic regulation, insofar as it concerns the protection of retail customers, will be confined almost exclusively to rural and remote areas. Again, it may be that traditional regulatory approaches are no longer optimal and new approaches need to be considered. If, as is likely, some geographic areas require subsidized prices in order to keep telecommunications services affordable, regulators will face the on-going problem of securing these funds in a more competitive market, assuming they are not provided from general government revenues. Traditional means of raising subsidies may no longer work, as in competitive markets it is more difficult and not advisable to tax only certain service providers, certain geographic areas, or certain services to secure the necessary subsidy.

Social regulation presents a more complex, heterogeneous picture across urban and rural areas. Intervention for the purposes of protecting health and safety – for example, by mandating access to 911 emergency services – will likely remain necessary in both urban and rural areas. A prescriptive, ex ante implementation of health and safety obligations can be justified on the grounds of the risks and irreparable harm that can come from an uneven or incomplete implementation of health and safety obligations.

Another major social regulatory issue that remains is the issue of carrier of last resort (COLR). Traditionally, the incumbent local exchange carrier was the COLR, being mandated to provide telephone service throughout its service territory, typically to any customer who wanted it. COLR obligations are not free, however, leading to two problems. First, the general issue is if, in a competitive environment, COLR

obligations need to be imposed at all. Second, if they do, how should they be paid for, as competitive markets do not permit regulators to impose asymmetric costs on certain companies without leading to potentially harmful and inefficient anti-competitive consequences. As competition intensifies, COLR obligations will become increasingly at issue. It is likely that in urban areas, a principled case can be made for the outright removal of COLR obligations. In rural and remote areas, maintenance of a COLR obligation, in some form, may be necessary but the precise manner in which it is implemented will require significant reconsideration given the changed nature of telecommunications markets.

This paper will look at a world after competition and explore those services and geographic areas that might still require regulatory intervention in order to protect customers and, if such intervention is required, what type of intervention is most attractive. This intervention can be ex ante or ex post, and it might be more traditional types of regulation or it might be different types of regulation more suited to contemporary markets. Certain alternative regulation may provide sufficient consumer protection while enabling more flexibility and more compatible with a competitive environment. Regulators need to address these identified problems, but they will want to do so in the least intrusive manner and in a manner that will not preclude the rise of competition if it becomes economically feasible. Even in the context of justified ongoing ex ante regulation, it is useful to explore substituting more flexible or principles-based regulation for the highly prescriptive regulatory rules that mark traditional ex ante approaches.

While it is obvious that the scope of regulation will shrink as competition becomes more pervasive, it also appears that there will still be a role for regulation. That does not mean, however, that how these remaining regulatory issues are addressed is of less importance. It is true as always, and perhaps more so in the face of increasing competition, that poor regulatory policy has the potential to create significant inefficiencies and to reduce the extent of competition.

While these issues have become most pronounced in countries with the most extensive development of competition in telecommunications, they will eventually become important in all countries permitting competition. In addition, the analysis for the telecommunications industry, and the resulting policy, can be used to address similar issues in other network industries subject to competition.