

TIME TO DEREGULATE WIRELINE COMMUNICATIONS

By Barry M. Aarons

On January 1, 2005, the Baby Bells will turn twenty-one. In those twenty-one years, as everyone knows, there has been a communications revolution. The Internet is available over analog and digital lines, over cable, and even wireless. Cell phones have become pervasive. Email and instant messaging are replacing voice calls and faxes, and Voice over IP (VoIP) is beginning to revolutionize tradition telephone service.

All of these innovations over the past twenty-one years have occurred in the unregulated or lightly regulated communications areas. The one communications field where innovation has been lacking has been in the highly regulated area of wireline communications. There is a compelling argument that this lack of innovation by wireline has been precisely because of heavy regulation—regulation that may have been appropriate at one time, but today is an anachronism. Accordingly, the path to new innovation in wireline communications lies through deregulation.

Since 1934 the PUC's have regulated the entry and exit, the transmission and distribution and the pricing of communications products and services in varying levels. And, arguably for the first fifty to sixty years that regulatory authority was, to a large extent, justified. That justification no longer exists. The days of "transmitting messages over two way voice grade distribution systems" is as antiquated as the slide rule. Technology, competition and consumer choice are the hallmarks of today's communications market.

The justification for removing regulation is simple. It is no longer necessary or advisable. So when the Texas legislature commences its hearings in March to determine continuation of the Texas PUC we have a simple suggestion for them: Dramatically scale back or eliminate the PUC jurisdiction over communications.

When a person moves into a new residence, "Let's call the local phone company" is no longer the normal thing to do. In fact, the number of main telephone lines has been *shrinking* since 2000. Clearly, the consumer is no longer hostage to whatever company happens to have a wire running into their home.

Consider my son, who upon moving to Butte, Montana and renting a house decided that having cellular service was enough and having a hard wire residential local service was a waste of money. So his choice for local exchange service was his cellular provider. Next was the decision for television entertainment. Did he check with a regulatory body on the service available, transmission and distribution or rate filings? Of course he didn't. He checked the price difference between cable and satellite and then made his decision. The local phone company, Qwest, was never under consideration.

That is about as competitive and free market based as could exist in any industry. Why continue to regulate it? The lack of regulation would not have affected his decision, the provision or quality of service or the pricing at all.

I recently had a radio news commentator ask if we sunset the PUC in communications what would happen to consumer protection. This assumes that the PUC exists to protect the consumer. Well it doesn't—under the *guise* of protecting consumers, the PUC in today's world protects the regulated service provider from competitive service provider, protects the competitive service provider from the regulated service provider and protects both of them from the consumer!

Unfortunately, the usual state of affairs is that regulatory entities assume a right to exist, and sunset pro-

ceedings presume that the agency will be largely unchanged. They discuss whether the agency used proper procurement procedures or whether the agency filled its vacant staff positions appropriately or whether they correctly transferred money between proper line items. They rarely if ever evaluate the underlying rationale for continued regulation.

But this time, it really should be different. If ever a market or an industry has undergone a revolution in ten years' time, it is telecommunications. If ever a legislature should consider dramatically deregulating an industry, this is the time in telecommunications.

The State of Texas has a unique opportunity. In March when sunset hearings commence on the PUC, legislators on the oversight committee can actually decide whether continued pervasive regulation is necessary. They should conclude that bold deregulation of that PUC authority is the right thing to do.

Today, technology regularly fathers new diverse products and services. Whether it is a phone that is a PDA or one that also takes digital photos (or one that does all three for that matter) entry and exit of products to the market benefits from lack of regulation. But the highly regulated are being inhibited from deploying new products and services.

The same is true of pricing. In the unregulated arena, competition is adjusting prices and virtually all of that price adjustment is downward. That downward slope would be faster under deregulation.

What about potential bad behavior by owners of the network? The legislature of Arizona recently converted its own communications system to a computer-based configuration where their basic phone service is voice over Internet protocol (VoIP). Yes, at some point they likely connect to a network point of presence. I suggest that, if those who own the network point of presence engage in bad behavior like bottlenecking a network connection, the state Attorney General would be all over them, with or without regulation.

Two things that deserve attention are universal service and lifeline rates. With universal service you first have to accept the idea that local basic service is a right or at least a minimal amenity of life. Presently service penetration availability sits at roughly 95%. Of the remaining 5% a significant portion is in areas where the need hasn't been demonstrated. Another portion consists of people who for whatever reason do not want to be universally enveloped into the communications system.

Frankly, universal service has been achieved. In the future the maintenance of universal service will continue but new technology will take the place of the traditional universal service idea. Cellular technology, satellite tech-

nology, broadband advances and personal communications networks will, in fact, be universally available.

What about lifeline service or lifeline rates? If we decide as the social policy of the state that a means tested group of citizens deserve to have a level of communications service at a reduced or subsidized rate the legislature has the tools to make that happen without a regulatory entity. The real question then is what kind of service will constitute that level of communications. The state, right now, today, could legislate the purchase of service from a select group of communications carriers be they wireline or cellular or other and give that to the means tested participants.

Governments have a history of overestimating how many in the means tested group would actually be interested in the reduced or subsidized service offering. In Arizona in the mid 80's a lifeline telephone service that the state estimated would attract 77,000 households never had more than 2,900 participants. But again the decision is a social policy that the state can make and implement without a regulatory structure.

Texas has the opportunity to take a leadership role in national communications policy development. A legislative program of broad deregulation of telecommunications, by narrowly defining the regulatory role of the PUC, will benefit the state and its consumers.

Entry and exit into markets, transmission and distribution of services and pricing should be governed by market forces, not by pervasive regulation. Technological advancements are being hampered by regulatory purview. Deregulation is in the best interest of the competitors, ILEC's, CLEC's, cellular providers and the rest to provide quality service, technological innovation and competitive pricing to their customers, for return on equity to their investors, and new jobs for Texas.

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