

2006 PURC TELECOMMUNICATIONS POLICY
ROUNDTABLE
Apples-Apples or Apples-Oranges?
Asymmetric Policies
in Telecommunications



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Purpose of the Meeting

On Monday, October 30, 2006, the Public Utility Research Center (PURC) sponsored a meeting in Tallahassee for the Florida Public Service Commission (FPSC), legislators and legislative staff, other government officials, consultants, academicians, and the telecommunications industry to discuss the applications of different rules to service providers that offer, from the customer’s perspective, substitutable services. This meeting used the Aspen Institute model of group discussions interspersed with formal presentations to set the context for those discussions. The meeting featured five presenters whose remarks informed the facilitated discussions of four break-out groups that met in the morning and afternoon. Each discussion group was asked to: identify what regulatory asymmetries exist and what their implications are; discuss what priorities exist for changing those asymmetries and why and for whom they are priorities; discuss the roles of governmental entities, the industry, academia and consumers in addressing those asymmetries; and identify potential conflicts for parties addressing them. The collective observations of each group were shared during the final session of the meeting. The meeting agenda is Appendix I.

Should Regulatory Policy be Asymmetric?

Opening Remarks by Dr. Mark Jamison, Director, Public Utility Research Center

Asymmetric regulation – regulating essentially substitutable services differently – has been a part of our telecommunications landscape in the United States, at least since Alexander Graham Bell began competing with Western Union. But it has been a particularly troubling sore spot for regulators, industry, and customers in recent years as the country has gradually abandoned the regulated-monopoly model of telecommunications provision for a more competitive model. The transition from one model to the other has proven to be both complicated and contentious. Incumbents from formerly distinct sectors such as television, telephone, and computing frequently prefer policies that preserve their own traditional advantages while initiating competitive opportunities in their rivals’ markets. New providers look for policies that constrain incumbents while market power exists, but then find it difficult to let go of these constraints even when they have lost their usefulness.

What’s a regulator or a policy maker to do? We, at PURC, convened a policy roundtable “Apples-Apples or Apples-Oranges? Asymmetric Policies in Telecommunications” to help answer that question. We did not anticipate that we would find a magical solution that had been overlooked by regulatory experts. Nor did we believe that we would uncover new facts or insights that would give stakeholders an “ah-ha” to significantly resolve outstanding issues.

Rather, we hoped that the roundtable would provide a dialogue that would identify and clarify conflicts over facts, values, jurisdiction, or perceived benefits and costs of various policy changes. We believe our speakers and participants achieved this. (See the Summary of Presentation Highlights, pages 4-8). Clarity on “what is” was provided by our keynote speaker, Harold Furchtgott-Roth, when he explained the differences between asymmetric regulation and discriminatory, uneconomic, contradictory, anachronistic, arbitrary, unpredictable, not transparent, and illegal regulation. Other speakers contributed to his observations by providing

detailed data on Florida's markets, explaining the difference between policies that are asymmetric in their application and policies that are asymmetric in their effect, and defining criteria for determining when, if ever, asymmetries may improve competitive market outcomes for consumers. The presenters and discussion groups found that there is greater interest in deregulating markets and, at the same time, retaining consumer protections, which may also indicate a growing convergence in stakeholders' views about the future of the markets and about what is important for public policy. (See the Synthesis of Group Discussions and Speaker Presentations, pages 9-16.)

A common theme in the discussion groups was the need for a venue that would allow regulators, industry, and customers to share, on an ongoing basis, their perspectives on various issues, identify problems before they become acute, and establish priorities for policy changes. With the continued support and cooperation of our many roundtable participants, we hope that such exchanges will occur at future PURC roundtables.

Summary of Presentation Highlights

In his keynote address, Harold Furchtgott-Roth, former commissioner at the Federal Communications Commission (FCC), provided "A User's Guide to Avoid Bad Regulation" by outlining the nature of different modes of regulation and defining a strategy for good regulation. Greg Shafer, Florida Public Service Commission (FPSC), outlined the trends in Florida's telecommunications markets, focusing on wireline, wireless, Voice over Internet Protocol (VoIP), and high-speed Internet access. Three speakers shared different perspectives on the nature of telecommunications regulation: From the cable perspective, Chris McDonald, Comcast, reviewed the evolution of asymmetric regulation in the telecommunications industry. He concluded that symmetric regulation exists for providers of VoIP, wireless, and cable. Fred McCallum, BellSouth Telecommunications, observed that convergence of voice, data, and video service delivery is occurring but, unlike Mr. McDonald, he viewed regulation of those services as being asymmetric. In his opinion, the goal should be the removal of barriers to convergence (elimination of asymmetric regulation). Doug Kinkoph, XO Communications, discussed asymmetric regulation from the perspective of the competitive local exchange carrier (CLEC). While he agreed with Mr. McCallum that eliminating asymmetric regulation should be the goal, he noted that the most difficult and critical determination is when that should be done. All speaker presentations may be accessed at www.purc.ufl.edu.

Mr. Harold Furchtgott-Roth

Former FCC Commissioner and President, Furchtgott-Roth Economic Enterprises



Mr. Furchtgott-Roth provided a conceptual framework for avoiding bad regulation. Bad regulation or the threat of it can indirectly affect participation in markets and the competitive choices available to consumers. Asymmetric regulation is usually the product of a statute rather than a regulatory interpretation. It usually takes the form of different regulations applied to the same service and may be based on incumbency, company size, company geography, and technology of service provision. By contrast, symmetric regulation makes no distinction based on those criteria. Regulation may be symmetric but still be lawfully discriminatory to take into account legacy differences (Section 271 of the Telecommunications Act) or competitive concerns (the Public Utility Holding Company Act or PUHCA). Discriminatory regulation can also be bad and lead to market distortions. Even if regulation is symmetric, vague and ambiguous regulation, such as had been applied to Sections 251 and 252 of the Telecommunications Act, raises implementation questions. The FCC is then charged with developing rules based on this vague statutory language and on an anticipation of what will happen. Those rules, in turn, will drive company investments. To the extent that regulatory guidance is unclear, uncertainty will result and will adversely affect the investment climate in the sector and potentially undermine the FCC's credibility. Firms may also be reluctant to invest in the sector when jurisdictional conflicts over regulation prevail. Regulation might be symmetric but could still lead to market distortions if it is uneconomic, contradictory, anachronistic, arbitrary, unpredictable, not transparent, or unlawful. The best regulatory strategy is one that resides within well established law and has a near perfect litigation track record so that the FCC will be less likely to be challenged in court and have its decisions overturned. Finally, good regulation is predictable, certain, economically rational, supportive of market participation, and ultimately beneficial to consumers.

Mr. Greg Shafer

Public Utilities Supervisor, Market Analysis Section, FPSC

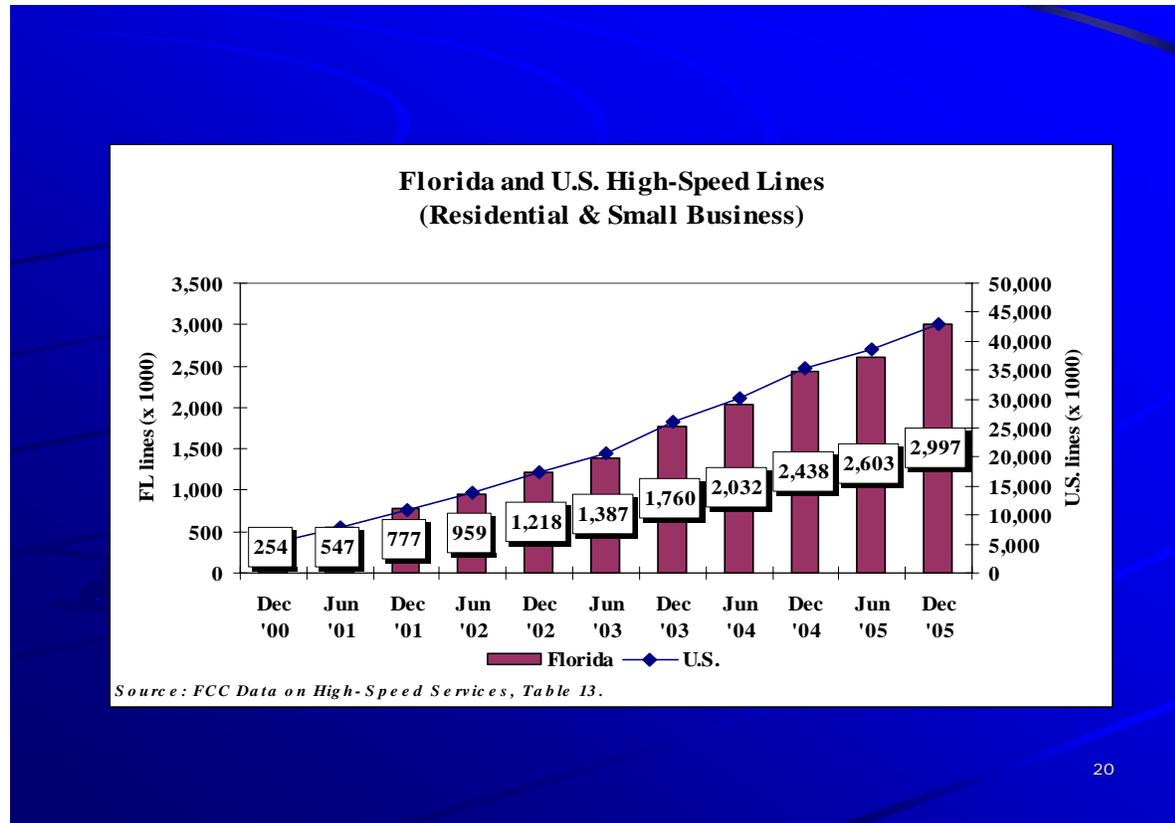


Mr. Greg Shafer presented an overview of competitive trends in Florida's telecommunications industry. CLECs experienced lower market share in 2006 than in 2005 for wireline access lines serving both residential and business customers. In general, the total number of wireline access lines from CLECs and incumbent local exchange carriers (ILECs) in Florida has been declining since 2004 for residential consumers but has increased at a slow rate for business customers. The erosion of wireline access numbers is due to several factors, including substitution of wireless services, substitution of VoIP (cable and over-the-top), and the use of e-mail and instant messaging as applications replacing wireline telephony service. Subscribership for wireless services surpassed the number of Florida access lines in 2003. However, the FCC reports a 3% reduction of wireless subscribers in Florida from 2004-2005. This reduction is counter to trends in the rest of the nation. Although the reasons for Florida's downward trajectory are speculative, this trend may reflect an overstated

number in 2004 or, if the FCC's numbers are accurate, the state's wireless subscribership numbers may have been affected by increasing fuel costs, a sluggish economy, and the 2005 hurricanes.

Approximately 70% of Floridians have broadband access to the Internet, and 27% do not have any form of Internet access in the home. As Figure 1 reflects, the number of high-speed lines in Florida is growing, much as it is in the rest of the nation.

Figure 1: Florida and U.S. High-Speed Lines, December 2000-December 2005



Platforms for Internet access include Digital Subscriber Line (DSL), cable modem service, wireless (Wi-Fi, Wi-Max, fixed wireless, and satellite), and Broadband over Power Line (BPL). Cable modem and DSL services account for 98% of the total residential broadband market in Florida, with DSL accounting for a slightly higher market share of the state's residential subscribers. With emerging technologies that allow for greater mobility, communications are now less constrained by geography.

Mr. Chris McDonald
Director of State Government Affairs, Comcast



Mr. Chris McDonald defines symmetric regulation as “treating like services alike, in the absence of market power.” Asymmetric regulation had been historically applied to telephony which was a government sanctioned monopoly. Regulation of VoIP and wireless services is symmetric because firms are treated the same within the industry, they aren’t legacy providers, no firm exercises market power, and they were created through private sector investments. In Florida, asymmetric regulation does not apply to cable providers which are accorded by statute “a level playing field.” The FCC has also declared video a competitive market with competition from satellite providers; ILECs partnering with satellite providers; providers of voice, data, and video services over fiber (Knology); private video service providers; and deployment of fiber-to-the-premises (Verizon) and fiber-to-the-curb (BellSouth). The rules shouldn’t be changed for telephone company entry into the video market, and if they are changed, all providers should be treated the same. Technology-based differences should not be the basis for different regulatory treatment.

Mr. Fred McCallum
Vice-President of Regulatory and External Affairs, BellSouth Telecommunications



Mr. Fred McCallum observed that communications markets are becoming increasingly competitive, with growing numbers of wireless users and subscribers of high-speed Internet services. Convergence of platforms is occurring because consumers want to be able to have multiple applications on one platform, such as video services on their cell phones. However, the pace of convergence is impeded because telephone companies, wireless providers, and video service providers face different regulatory schemes stemming from legacy regulation. The goal should be to eliminate those regulatory hurdles. An imperative to accelerating competition in wired video service is a streamlined regulatory process with the suggested removal of build-out requirements for new entrants. Once there is competition, relaxed franchise requirements for incumbent cable providers would also make sense. Also problematic is the asymmetric regulation applied to over-the-top VoIP providers (providers that require end users to obtain broadband service from a third-party provider) in terms of their obligations, particularly safety and social obligations, compared to those of other types of providers, like ILECs and CLECs. The existing pace of competition suggests that the need for regulatory asymmetry or for any regulation is questionable.

Mr. Doug Kinkoph

Vice-President of Regulatory and External Affairs, XO Communications



Mr. Doug Kinkoph explained the need for asymmetric regulation in markets that were historically closed to competition and gave inherent advantages to incumbents. The requirements of ILECs to unbundle their networks and interconnect provided the conditions for the introduction of DSL, the entry of facilities-based CLECs, the entry of cable providers into telephony, the entry of ILECs into video service delivery, and the growth of wireless service. Regulators need to sample each market segment – residential, business, and wholesale—to determine when asymmetric competition should be terminated. Only as individual segments are sufficiently self-regulated by market forces should symmetrical regulation be eliminated. The timing of deregulation is critical because if incumbents are allowed to deregulate prematurely, competition could be slowed and benefits to consumers undermined. If deregulation to wholesale markets occurs prematurely that could harm competition in the retail residential and business markets.

Synthesis of Group Discussions and Speaker Presentations

Speakers and discussion participants agreed that there is growing competition in the communications sector, which ultimately will provide more choice to consumers in both products and services. Moreover, this competition is increasingly taking the form of convergence, whereby providers offer consumers bundled services of voice, data, and video in the form of “one-stop shopping.” For example, ILECs are laying fiber for multi-channel Internet Protocol television systems and cable companies are installing Internet Protocol in their systems and offering facilities-based voice competition. Providers can also partner with others to provide bundled services: ILECs may provide traditional voice, Internet, and wireless services (often through mergers) and partner with satellite companies for the video component. According to a report filed by four ILECs for the FPSC, the factors driving convergence are as follows: technological changes, customer demand for bundled services, and competition among providers seeking gains from improved efficiency and the promise of lower customer churn rates and greater profits.¹

Although there appeared to be general consensus about these industry trends, participants and speakers sometimes had different perceptions of impediments that providers face in moving toward greater competition in the industry. Group discussions raised questions about: (1) what services are actually competitive; (2) what services are currently asymmetrically regulated and when should asymmetric regulation be terminated; (3) access to data for determinations of competition; (4) the appropriate roles for the federal, state, and local governments, the industry, and academia in moving toward more competition and greater consumer choice; and (5) the continued need for and most appropriate form of consumer protection. Each of these issues is summarized below.

As a backdrop for discussion of these five issues, an understanding of the regulation affecting each type of provider is useful. Table 1 reflects in slightly modified form the classification provided by one discussion group but other groups had similar approaches.

¹ William E. Taylor, et al. (July 2006). “Intermodal Competition in Florida Telecommunications.” NERA Economic Consulting. Prepared for BellSouth, Embarq, Verizon, Windstream Communications. Cited in FPSC *Report on the Status of Competition in the Telecommunications Industry as of May 31, 2006*, at 65. Available at: <http://www.psc.state.fl.us/publications/pdf/telecomm/2006CompReportfinal.pdf>.

Table 1: Communications Regulation by Provider

Provider	Voice Regulation	Data Regulation	Video Regulation
ILECs	<ul style="list-style-type: none"> • Economic for local telephone and intrastate (state) • Service standards • Social (Universal Service Fund (USF), 911, Carrier of Last Resort (COLR) obligations, Lifeline) • Wholesale requirements 	<ul style="list-style-type: none"> • Broadband: light regulation • Local right-of-way • Federal tax 	<ul style="list-style-type: none"> • Public, Educational and Governmental (PEG) • Content on decency (local/federal) • Local franchise requirements <p>*Franchise requirements can be different from incumbent cable providers.</p>
CLECs (including cable which has CLEC certification)	<ul style="list-style-type: none"> • Service • Social (USF, 911, CALEA) • Truth in billing 	Same as ILECs	Same as ILECs
Cable (VoIP)	Social (USF, 911, CALEA) (federal requirements)	Same as ILECs	<ul style="list-style-type: none"> • Must carry retransmission PEG access cable channels. • Basic tier price regulated; otherwise same as ILECs
Satellite	Another pipe; regulated same as VoIP	Another pipe; same as VoIP	Minimum federal regulation parallels Title VI.
Wireless	<ul style="list-style-type: none"> • Service • Social (USF, 911, CALEA) • Siting (local requirement) 	None except for spectrum (federal requirement)	None. Must walk fine line to avoid regulation as broadcast entity.
WiFi/ WiMax WiFi-Internet access as a free network by municipalities, airports, coffee shops. WiMax-higher speed using different spectrum	Regulated same as VoIP		Will be important when paired with content applications of Yahoo, Google etc.

The FPSC has regulatory jurisdiction over the ILECs' local and intrastate wireline services. CLECs are certified by the FPSC and are subject to the FPSC's service quality standards. However, they are only required to file tariffs with the FPSC and are not price regulated. The FPSC has no jurisdiction over wireless telecommunications, VoIP services, or broadband services. As reflected in Table 1, certain service and social obligations apply to providers of voice service, but compliance is not enforced in the same manner. However, all providers, including CLECs and wireless telephone providers that become designated as eligible telecommunications carriers for purposes of receiving high-cost and low-income universal service support, must agree to meet certain conditions. The FCC has regulatory jurisdiction over the services of all communications carriers, including ILECs' intrastate inter-exchange services, but currently imposes no economic regulation on those services. The FCC has been moving toward regulating like services in a similar manner. For example, the FCC has classified cable modem service, DSL Internet access service, and, most recently, Broadband over Power Line (BPL)-enabled Internet access service as an "information service." Designated as such, these services are not subject to price regulation. Local governments enter into franchise agreements with cable providers, ILECs, and CLECs for television service. Siting for cellular towers and approval of rights-of-way are also the purview of local governments.

Competitive services

According to one group, regulation should be based on market failure, the lack of consumer choice, or the recognition that a given service or technology is essential. Presumably, regulation is not needed in competitive markets. There is always debate about the need for regulation, the level of competition for a given service, and the conditions for relaxing regulation, with entrants



and incumbents understandably having different perspectives. As Mr. Kin-koph observed, deregulation will never happen quickly enough for the incumbent carriers, and it will occur too quickly for many new entrants. The solutions that entrants might seek, from their perspective, to "level the playing field" typically take the form of asymmetric

regulation, such as the rules for unbundling and interconnection for CLECs, as authorized by the 1996 Telecommunications Act, or the proposed elimination of buildout requirements for phone companies entering the television market. Therefore, it perhaps comes as no surprise that Mr. McDonald, Comcast, considers video service to be a competitive market, whereas Mr. McCallum, BellSouth, considers the existing franchise process to be a significant barrier to entry that prevents the video service market from being competitive. Mr. McCallum advocates relieving cable incumbents of their buildout requirements but only when their franchise agreements expire or when wireline competition exists.

Penetration rates for given services are one measure of market power. One might expect incumbents to argue that penetration rates have declined sufficiently, so they no longer have market power. Under those circumstances, asymmetric regulation favoring entrants, therefore, would no longer be justified. By contrast, entrants might argue that barriers to entry still exist once asymmetric regulation is relaxed or terminated. For example, CLECs still cite as barriers to entry a lack of access to unbundled network element - platform UNE-P lines resulting from the FCC's Triennial Review Remand Order. Interconnection agreements and UNE pricing also are cited as barriers to entry and impediments to competition.²



To what extent can rules or requirements spur greater competition? There was some group discussion about trade-offs in wireless services. On the one hand, required standardization for wireless platforms might increase churn and give customers more choices. However, the lack of standardization and the persistence of long-term contracts decrease churn and give wireless providers more certainty in planning for infrastructure expansions. It was noted that premature standardization might hamper competition, so timing here is critical.

Asymmetrically regulated services and termination of regulation

As Mr. Furchtgott-Roth noted, asymmetric regulation is usually a product of the statute rather than an interpretation of regulators. It may involve the same service but different regulation based on differences in a company's longevity (incumbent versus entrant), size, geographical considerations, or technology used for service delivery. Discussion groups noted asymmetric regulation particularly as it affected ILECs compared to other types of providers. Examples included differences in the following:

- wholesale obligations of ILECs versus CLECs
- regulation of service quality for and reliability of ILECs' and CLECs' telephony service and not for telephony service of other providers
- price regulation of ILECs' telephone service and not for telephony service of other providers
- FPSC reporting requirements of ILECs compared to no reporting requirements for other providers that are not under FPSC jurisdiction
- required contributions by carrier type to the federal universal service fund
- available mechanisms for handling consumer complaints

Providers also may be treated in like manner at the federal level but in practice experience asymmetric treatment. An example is VoIP providers. The FCC requires VoIP providers to offer

² FPSC. *Report on the Status of Competition in the Telecommunications Industry as of May 31, 2006*, p. 63.

911 but because they are not statutorily defined as telephone companies, they are not subject to surcharges for that purpose.

Of course, there are differences of opinion concerning the effect on incumbents and entrants of COLR obligations and current practices affecting interconnection, inter-carrier compensation, access to unbundled network elements, pole attachment parity, and access to the video market. Depending on one's perspective, additional measures might be needed, including enforcement measures, to ensure a "level playing field." Others advocated a symmetric liberalization of existing asymmetric regulation. The timing of and conditions for removal of such regulation are critical because barriers to entry might persist if asymmetric regulation is terminated before there is effective competition.

While the discussion groups focused on many examples of asymmetric regulation, the issues of COLR obligations and access to video services received particular attention at the meeting, perhaps because of Senate Bill 142 which was enacted by the 2006 Florida legislature. Among other provisions, this bill requires ILECs to continue their COLR obligations until January 1, 2009. However, prior to this expiration date, an ILEC will be automatically relieved



of those obligations when developers or business and residential multi-tenant building owners enter into agreements with telecommunications providers that limit or impair the ILEC's ability to provide service or access the property. An ILEC may also request a waiver of the COLR obligation from the FPSC for good cause.

The FPSC was required to develop rules to implement this provision. From the ILEC's perspective, relief from COLR obligations reduces its administrative and cost obligations which would otherwise place it at a competitive disadvantage since other carriers are not assessed the same taxes and fees. The jury is out about the implications for customer choice stemming from this apparently growing trend of exclusive agreements of property developers and multi-tenant building owners with telecommunications providers.

Discussion groups also addressed the competition of cable providers and ILECs for an increasing share of the television market. Florida's House of Representatives passed legislation (2006 HB 1199) to create state-issued franchising in Florida, but the bill was not enacted. States with streamlined video franchising include, among others, Texas, California, Virginia, and Indiana. Currently, all providers must seek franchises from each local government – a situation which entrant ILECs consider a barrier to entry. In one discussion group, it was noted that Verizon had to deal with 27 jurisdictions in Pinellas County alone. Telephone companies claim that a streamlined state franchise system would enable them to roll out video services more expeditiously using fiber to the home or Internet Protocol television technology. Where competition for video services exists, cable rate increases have been lower than in past years, and

consumers are reaping the benefits.³ In a recent speech, FCC Chairman Kevin J. Martin observed, “According to our annual price survey, where there is no competition the average price for cable programming was \$43.33. Add in competition from DBS, and the average price is the same. In areas where there is competition from a second cable operator however, the average price for cable programming decreased to \$35.94.”⁴ On the other hand, cable companies that have already paid to roll out their services claim that competition already exists and therefore oppose such a system. In his presentation, Mr. McDonald claimed that Verizon has already demonstrated that there are no barriers to entering the video market and cited the franchises the company obtained in the counties of Manatee, Sarasota, Pasco, and Hillsborough and the cities of Tampa, Bradenton, Oldsmar, and Temple Terrace. How customers are affected by a continuation of the existing regulatory climate and any changes to it is, of course, the question raised because competition in the video market has affected urban and rural regions differently.

Access to data for determinations of competition

One of the most discussed issues was that of access to data for purposes of determining competitive markets. The FPSC staff is concerned about this issue because it is statutorily required to prepare and deliver an annual report to the Governor and Legislature on the status of competition in the telecommunications industry. The challenge for the FPSC is that it has no jurisdiction over VoIP, wireless, and broadband providers and therefore must rely on voluntary responses from those providers to data requests and on data collected from other sources, such as



the FCC for broadband and NERA Consulting and other firms for wireless.

In 2006, the FPSC had a 93% response rate from CLECs; because CLECs receive certification from the FPSC, the FPSC exercises some jurisdiction over them. Without symmetrical access to information from all providers, including those not under the FPSC’s jurisdiction, the FPSC con-

siders itself constrained in determining whether competitive providers are able “to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions,” or whether consumers can obtain “functionally equivalent services at comparable rates, terms, and conditions.” Discussions broached the limitations of asymmetric access to data on competition in Florida; however, they also raised the companies’ countervailing arguments of the proprietary nature of the requested

³ Sarmad Ali, “Cable Rate Increases Are Smallest in Years.” *The Wall Street Journal*, December 7, 2006, at D. 1 and D. 5.

⁴ Remarks of FCC Chairman Kevin J. Martin, Georgetown University McDonough School of Business’s Center for Business and Public Policy, November 30, 2006.

information, costs associated with additional reporting requirements, and usefulness of the information being requested.

The appropriate roles for the federal, state, and local governments, the industry, and academia in moving toward more competition and greater consumer choice

The discussion groups were asked to consider the appropriate roles for government at all levels, the industry, and academia in moving toward more competition and greater consumer choice. One point raised by Mr. Furchtgott-Roth and further addressed in discussion groups was the clarity of language used in legislation and the confusion and litigation that results from vague and ambiguous language, even if regulations are symmetric and non-discriminatory. One group recommended that legislation, which provides authority for FPSC rulemaking, be clear, easily interpreted, user friendly, and balanced; at the same time, legislation needs to accommodate inevitable changes in technology and the market.

There is always a debate about appropriate federal and state roles and the need for federal pre-emption. One group suggested that Congress defer to states when states have a clearly defined interest. Historically, the federal government has set policy on anti-trust and intercarrier compensation, including access charges, unbundled network elements, universal service fund, and VoIP obligations, interconnection, and restructuring requirements for the Regional Bell Operating Companies. States have set policy on COLR designation, video service franchising, and rules for cost of service and quality of service. Joint responsibilities for the federal and state/local jurisdictions embrace various aspects of consumer protection, public safety, competition and wholesale markets, and universal service. Local governments and the industry currently have a role in working out the terms of franchise agreements for video service and the associated compensation issues for providers to use local rights-of-way.



As one group observed, an ongoing priority for government is the re-evaluation of regulation as market conditions and technology evolve. Jurisdictional responsibilities are likewise bound to change. One participant pointed out that the FPSC has a particularly good track record in monitoring state-wide changes in the communications industry despite its challenges with data access.

Academia can provide information that explains how markets operate and provide the research to respond to specific public policy questions. One discussion group cited the example of PURC’s study (February 2006) titled “Making Telephone Service Affordable for Low-Income Households: An Analysis of Lifeline and Link-Up Telephone Programs in Florida.” The Florida legislature, the FPSC, the telecommunications industry and others were trying to understand why penetration rates for lifeline were so low relative to that in other states. PURC’s study provided a reliable estimate of the number of households in Florida that are eligible for Lifeline and Link-Up program benefits and more information about the determinants of participation in these programs to help policymakers consider policy changes.

The continued need for and most appropriate form of consumer protection

Consumer protection was another topic that garnered considerable group discussion. The question posed in one group is whether deregulation is in the best interest of consumers. Many issues affect consumers, including the terms of cell phone contracts, quality of service issues, and the effects of mega-mergers. Consumer complaints are handled disparately depending on the provider whose service the consumer is using. For example, the FPSC handles complaints related to billing, cramming, and slamming for local and intrastate telephone calls and service quality complaints about ILECs, CLECs, and pay telephone providers. The Consumer Inquiries and Complaints Division of the Consumer and Governmental Affairs Bureau in the FCC handles consumer complaints regarding interstate and international telephone calls, wireless telephone service, and cable/satellite television. Complaints about solicitation calls may be lodged with the Florida Department of Agriculture and Consumer Affairs or the FCC. Antitrust regulation is one option for protecting the public interest. One group asked: As competition evolves, should antitrust laws be strengthened and, if they should, how should that be accomplished? Another group discussed the importance of providing incentives to companies for improved customer service.

Conclusion -- moving forward

Some of the group discussion focused on strategies for voicing new ideas. One group mentioned that in lieu of reporting requirements, ILECs and CLECs should be encouraged to communicate with the FPSC about issues that warrant change. Another group suggested an annual caucus that would raise five or six major issues that could be addressed by the Florida legislature. In Illinois, the requirement for raising issues that the Illinois Commerce Commission would like to recommend is included in statute: “The Commission shall monitor and analyze patterns of entry and exit and changes in patterns of entry and exit for each relevant market for telecommunications services, including emerging high-speed telecommunications markets, and shall include its findings together with appropriate recommendations for legislative action in its annual report to the General Assembly.” (220 ILCS 5/13-407)

Finally, there was general consensus that the telecommunications industry is moving toward a new paradigm where the old silos of voice, data, and video regulation present barriers to entry and the wrong signals to investors. Although there was some disagreement about specific strategies for removing those barriers, there appeared to be consensus on the need to monitor competition on an ongoing basis, the importance of consumer protection in noncompetitive markets, and the importance of regulating functionally equivalent services, rather than technologies, in like manner. An “apples-apples” regulatory scheme might not exist yet, but public policy is clearly moving in that direction.

Appendix I

Apples-Apples or Apples-Oranges? Asymmetric Policies in Telecommunications

**PURC Telecommunications Policy Roundtable
Monday, Oct. 30, 2006
8 a.m. – 5 p.m.
Turnbull Conference Center, 555 W. Pensacola St., Tallahassee**

Purpose

Once we had only plain old telephone service. Wireline voice service was the only game in town, regulated by rate of return regulation, and long distance service subsidized local service. Ma Bell managed the subsidies. Today's communications sector is much more complex with e-mail, video, Internet, and telephony services accessible from multiple technology platforms in various locations and from numerous types of providers. However, many of our regulatory policies – video franchising, the subsidy system, regulation of prices – have arguably lagged behind and over the years become increasingly asymmetrical.

This forum focuses on asymmetric regulation where different rules apply to service providers offering, from the customer's perspective, substitutable services. Such differences in rules may be based on the technologies used, the customers' geographic location, or the providers' regulatory legacies. What are the implications for the federal telecommunications subsidy system, providers offering communications services, and customers if the existing regulatory scheme remains unchanged? What regulatory policies, if any, should be changed to better reflect evolving communications services and delivery modes? How should those changes be prioritized? And who should make the decisions to expedite those changes?

The output of this roundtable will be a report for national distribution that summarizes the speakers' comments, reports the breakout groups' conclusions, synthesizes the issues, and recommends next steps.

PURC Telecommunications Policy Roundtable
Monday, Oct. 30, 2006
8 a.m. – 5 p.m.
Turnbull Conference Center, 555 W. Pensacola St., Tallahassee

Agenda

- 8 – 8:30 a.m. **Registration**
- 8:30 – 8:45 a.m. **Welcome**
Mark A. Jamison, Director, PURC
- 8:45 – 9:30 a.m. **Keynote Address: What’s the Difference? Telecommunications Policies for a Converged Industry**
Harold Furchtgott-Roth, former FCC Commissioner and President, Furchtgott-Roth Economic Enterprises
- 9:30 – 10:15 a.m. **Convergence and Legacy Regulations**
Are there inherent differences between types of service providers? If so, what are they? Are there inherent differences between types of services? Do these differences, if they exist, imply a need for asymmetric regulation? What asymmetries might be appropriate?
- Speakers:**
Chris McDonald, Director of State Government Affairs, Comcast
Fred McCallum, Vice President, Regulatory and External Affairs, BellSouth Telecommunications Inc.
- 10:15 – 10:30 a.m. **Break**
- 10:30 – 11:30 a.m. **Morning Breakout Groups**
Breakout groups discuss scenarios:
1. What are the asymmetries?
 2. What might happen if current asymmetries continue unchanged?
 3. What if all asymmetries were removed?
 4. What, if any, asymmetries make sense?
- Facilitators:**
Susan Clark, Shareholder, Radey, Thomas, Yon and Clark, P.A.
Heather Gold, Senior VP of External Affairs, XO Communications
Beth Keating, Of Counsel, Akerman Senterfitt
Stephen McDowell, Professor and Chair, Dept. of Communication, Florida State University
Bob Rowe, Senior Partner, Balhoff & Rowe, LLC

- 11:30 a.m. **Lunch**
- 1 – 1:45 p.m. **Session 2: Stakeholders’ Perspectives**
This panel will further describe stakeholders’ perspectives. What are the goals of public policy that influence asymmetric regulation? Whose role is it to make changes, if changes are needed? How can state regulators balance their roles as stakeholders (with respect to jurisdictional authority), policy maker, policy advisor (to both state and federal government officials), and regulator?
- Speakers:**
Greg Shafer, Public Utilities Supervisor, Market Analysis Section, Florida Public Service Commission
Doug Kinkoph, VP, Regulatory & External Affairs, XO Communications
- 1:45 – 3:15 p.m. **Afternoon Breakout Groups**
Breakout groups discuss action items:
1. What are the priorities for changing asymmetries in regulation?
 2. Why are these priorities?
 3. What should the states, the FCC, state legislatures and Congress do regarding regulatory asymmetries?
 4. What are the roles of industry, academia, and consumers in the process?
- Facilitators:**
Susan Clark, Shareholder, Radey, Thomas, Yon and Clark, P.A.
Heather Gold, Senior VP of External Affairs, XO Communications
Beth Keating, Of Counsel, Akerman Senterfitt
Stephen McDowell, Professor and Chair, Dept. of Communication, Florida State University
Bob Rowe, Senior Partner, Balhoff & Rowe, LLC
- 3:15 – 3:30 p.m. **Break**
- 3:30 – 5 p.m. **Reporting from Groups and Synthesis**
Mark A. Jamison, Director, PURC
Bob Rowe, Senior Partner, Balhoff & Rowe, LLC
- 5 p.m. **Adjourn**