

social, economic and general business characteristics or by ILEC network geography or architecture. The speed and direction of competition will vary geographically, at least initially, and efficient competition will likely be sacrificed if this factor is ignored.

B. Triggering Regulatory Relief

The preceding section reveals that while economic theory provides important and useful insights to assist the Commission, judgment on its part will be required. For this reason, clear and objective triggers that are easily measured and verified can reduce contention and allow regulators to expedite proceedings to provide additional pricing flexibility and reduce regulatory constraints. On the other hand, for some services, e.g., special access and dedicated transport, prices are already sufficiently constrained by market forces so that triggers would be unnecessary.

A well-crafted plan should link regulatory relief—such as volume and term discounts, contract tariffs and forbearance—to objective triggers that measure the availability and use of competitive alternatives to ILEC carrier access. Regulatory relief can be structured in different phases, in which, for example, certain types of triggers may correspond to different forms of regulatory relief. But in general, triggers can be thought of as market symptoms which, combined with the availability of UNEs, makes actual competition more viable and potential competition a greater check on the ability of the ILEC to raise prices above the competitive level. Triggers are a means for regulators to ease regulatory constraints in particular markets—in certain market areas or for certain services and customers—as the ILECs' residual market power is reduced to levels found in unregulated markets. In this sense, triggers work to ensure that once market conditions change, appropriate regulatory constraints immediately follow. Their use ensures that there is a timely process in place that responds to the rapidly-changing market conditions in carrier access and increases the likelihood that efficient regulatory decisions are implemented.

Examples of potential triggers include availability of unbundled network elements, transport and termination charges in place, provision of network elements and services, and the existence of number portability arrangements. These objective and easily verifiable triggers

provide useful information regarding the state of regulatory and legal entry barriers. They also contain information about the economic barriers to entry as well, because the availability of UNEs reduces concerns about sunk costs of entry. Additional possible triggers include answers to questions such as the following: Are competitors collocated in wire centers?; Are competitors deploying facilities and using UNEs in the wire centers?; How many competitors are present in some geographic area?; Do competitors have the ability to provide service to a substantial percentage of the market, using their own facilities or those of the ILEC?

In addition, since the purpose of the triggers is to permit ILECs to move between phases of regulatory reform in a manner that matches market conditions, we believe that movements between whatever phases are eventually chosen by the Commission need not be sequential. Meeting the trigger conditions for a particular phase should be sufficient to grant the associated regulatory relief. For example, market conditions for special access services in most geographic areas are such that immediate regulatory forbearance is warranted, and stepping through sequential phases of deregulation would be an inefficient, time-consuming path to ultimate regulatory forbearance.

The key to using objective triggers is that they be easily verifiable and used expeditiously to evaluate ILEC proposals for flexibility. A process that automatically grants ILECs certain regulatory relief when a specific trigger is reached greatly reduces contention, which allows the Commission to administratively expedite ILEC filings. It also prevents the proliferation of ILEC waiver requests, forbearance petitions etc. which could tie up Commission resources. The requirements necessary for regulatory flexibility would have been decided *ex ante*, and thus the Commission's main task would be to verify the fulfillment of the trigger. The importance of moving rapidly to determine the legitimacy of ILEC claims cannot be overstated. Market dynamics are changing the technology and structure of telecommunications at an extremely rapid pace. Having in place quantifiable triggers that correspond to predetermined flexibility reduces uncertainty of the participants and increases the likelihood that competition will not be distorted by unneeded asymmetric burdens.

V. CONCLUSIONS

Since competitive market forces are vastly superior to administrative regulation, the Commission should immediately permit the market to constrain ILEC prices in special access and dedicated transport, where such forces are already strong. Doing so would lead to more efficient pricing, production, and investment. As the Commission embarks on the process of moving remaining carrier access markets to eventual forbearance, it should consider the significant costs to consumers and to society as a whole of not relying on market forces. In order to increase the likelihood that efficient competition develops, the Commission must pursue a policy that regulates ILECs and entrants as symmetrically as possible and that does not attempt to guarantee competitors' success in the marketplace. Though market pressures have influenced carrier access pricing since 1984, the recent removal of entry barriers in the carrier access market stemming from implementation of the Telecommunications Act makes regulatory relief imperative. In our experience, four economic principles are particularly important:

- Imperfect competition is generally far superior to imperfect regulation in controlling ILEC prices and service quality. The potential costs of permitting pricing flexibility for incumbent firms prematurely are small and are likely to be swamped by the benefits of competition under symmetric regulatory conditions.
- Delay is costly. The potential costs of permitting pricing flexibility for incumbent firms prematurely are swamped by the potential costs of inefficient entry from opening markets to competition under asymmetric regulation.
- Competition is important; competitors—incumbents and entrants alike—are not.
- Prices cannot be set solely by reference to cost studies performed in litigated proceedings. Prices should approximate their market levels under competitive conditions, in which both cost and demand factors play a role.

In using these abstract policies in a litigious world, regulators would be well-served by setting *ex ante* observable and measurable triggers that provide specific relief from regulatory obligations, as ILEC services move to different phases of regulatory relief and eventual forbearance.