FCC Efforts to Pre-empt State Regulatory Authority in Telecommunications

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As you know, there have been fundamental changes in the telecommunications industry in recent years. Advances in technology have not only greatly improved and broadened telecommunications services, but also undermined the rationale for end-to-end service by a single regulated monopoly. Movement towards competition and deregulation has been difficult and controversial. This should not be surprising in light of the fact that telephony has long been recognized as an essential service in which the public interest is paramount. Telephone service touches every American, and any fundamental change in its cost or how it is provided can be expected to evoke a broad public reaction. This country has had a longstanding policy of universal service, under which local rates and service connection charges were intentionally subsidized in order to maximize the number of Americans who could afford to join the telephone system. The political judgement that low-cost basic telephone service is in the public interest had been uniformly embraced, as were higher rates for the luxury of long-distance calls. When it started to become apparent that the economic justification for having a single monopoly providing telephone service is no longer valid, at least for major segments of the industry, pressure began to build for competitive entry. In 1972, for example, the

New York State Public Service Commission authorized the connection of customer-owned terminal equipment to the local network of Rochester Telephone Company, a large independent firm. Then, through a series of court decisions and FCC rulings, a federal policy emerged that sought to introduce competition with respect to terminal equipment and long-distance service, favoring the deregulation of those sectors of the industry. The FCC's efforts to move from an environment of complete monopoly service and total regulation on the interstate level to competition and deregulation necessarily caused tension with the states because the telephone plan used to provide interstate service is the same one used to provide intrastate service, which meant that changes in one area would necessarily affect the other. Congress recognized this interrelationship, and until recently joint state and federal regulation of telephone service worked well. However, when the FCC attempted to pursue its deregulatory goals beyond what state officials felt was appropriate, because of their assessments of both the benefits of deregulation and the practical consequences for local rate-payers, which happened to be almost uniformly negative, the federal agency became impatient with the joint structure and began to expand its own authority. This it did through the use of the Federal Preemption Doctrine, which allows state law to be overridden under certain circumstances, and by the creative use of its powers; in other words, in order to further federal policy objectives, it took actions for reasons other than those stated.

I believe this expansion of FCC authority to be bad, both because the Commission has exceeded its statutory powers and because dominance by the FCC will not result in the best telecommunications policy. The Communications Act of 1934 established a framework under which all matters relating to interstate communications would be regulated by the FCC, and all matters relating to intrastate communication would be regulated by the states. Section 152B of the Act specifically states that "nothing in this Act shall be construed to apply or to give commission jurisdiction with respect to charges, classification practices, services, facilities, or regulations for or in connection with intrastate communications service of any carrier." Since many of the same facilities and personnel are used to provide both interstate and intrastate service, a separations process was devised to divide costs between the interstate and intrastate jurisdictions, a process based primarily criteria relating to usage. This sounds simple, but the process has developed into an extremely complex and esoteric set of rules. It is also important to note that over the years the separations process became a mechanism for subsidizing the cost of local service. Typically, costs assigned to the interstate side carried a contribution of cost assignment and excess of allocation based on usage. In addition, a substantial portion of the non-traffic sensitive costs for local networks were assigned to the interstate jurisdiction. The separations process was augmented by a joint board consisting of federal and

state regulators to consider issues related to the separations of costs between the interstate and local jurisdictions and make recommendations to the FCC.

In the 1970s, in order to further federal policy, which favored competition, the FCC began to expand its role. In "North Carolina Utilities Commission vs. FCC," a federal appeals court upheld FCC preemption of state regulation when such regulation was in conflict with the FCC policy favoring the interconnection of customer-provided equipment. The court based its decision on the ground that inconsistent rules with respect to the interconnection of telephone equipment could not co-exist, and that in such cases the FCC's jurisdiction is preeminent. A dissent expressed the view that Congress had provided the system of divided jurisdiction and had not given the FCC primary jurisdiction even when state and federal policies were in conflict. In "Puerto Rico Telephone Company vs. FCC," a federal court upheld FCC preemption of state regulation of the interconnection of private branch exchanges, also on the theory that FCC jurisdiction is primary and should prevail when state and federal regulation are incompatible. In "Computer and Communications Industry Association vs. FCC," the FCC totally precluded the states from the regulation of new terminal equipment, even if provided by regulated utilities. Here, FCC preemption was asserted in a situation where state regulation did not directly interfere with federal regulation, but where state regulation was merely inconsistent with FCC policy. The FCC

determined that promoting competition in the provision of customer premises equipment would further the general statutory goal of efficient utilization of the interstate telephone network. This broad view of the FCC's powers to preempt state regulation substantially undermined the jurisdiction structure that had been established by Congress. What had once been regarded as a clear congressional mandate to leave the states the power to regulate local telephone service had been transformed into a system of preeminent federal regulation, which allowed state regulation only to the extent that it did not hinder the implementation of federal policy developed solely by the FCC within the broad policy goals of federal legislation.

In its enthusiasm to implement its view of telecommunications policy the FCC went beyond a direct preemption of state regulation and exercised its powers in a manner which, in my view at least, was disingenuous. As you know, the assignment of non-traffic sensitive costs to long-distance calling has become a major issue since the introduction of competition. Most economists contend that no NTS costs should be assigned to long-distance and that in a truly competitive environment local exchange companies would not be able to include such costs in their charges to long-distance carriers. Without going into the merits of the argument, it was not universally embraced by state regulators. Perhaps more important, a loss of the interstate contribution to local NTS costs would significantly increase local rates. The FCC had been pressing

for a reduction in the assignment of NTS costs to the interstate jurisdiction. While it had made substantial progress in this effort, the separations process was cumbersome and slow-moving. The FCC decided to take more direct action by establishing a customer access line charge account which would be directly imposed upon end users, allegedly for access to the interstate network. This charge, however, was mandatory and could not be avoided by a customer willing to forego access to interstate calling.

We opposed the line charge for many reasons, but the thing that bothered me most was that I viewed it as an end run by the FCC around the separations process. The FCC was, in fact, shifting local NTS costs back to local calling without having to go through the separations process required by federal legislation. Again, as in the preemption cases, the FCC was improperly expanding its jurisdiction in order to impose its view of good telecommunications policy on the states. The FCC has also ordered the deregulation of billing and collection services at the interstate level and the deregulation of simple inside wire. These actions were taken on the grounds that they are necessary to promote competition. However, they will have the indirect effect of reallocating costs from interstate to local calling outside the separations and joint board processes and I suspect that may have been the most important motivation for these actions.

Steady expansion of FCC jurisdiction at the expense of state

regulation appeared to be unstoppable until the recent Supreme Court decision in "Louisiana Public Service Commission vs. FCC," which overturned FCC preemption of state regulation of depreciation rates for intrastate service. In 1980 and 1981, the FCC had issued orders relating to the depreciation of telephone plant. The National Association of State Regulators asked for an order declaring that the FCC did not intend to preempt the states in these matters. The FCC issued an order agreeing that it had not intended to preempt the states and firmly reject contentions that it had the power to do so. On rehearing, however, the Commission totally reversed itself and found that it had the power to preempt the states and in fact had done so in its original orders. The FCC's decision was challenged by many state commissions, including New York's. We lost in the lower courts, but the Supreme Court agreed to review the case. A few weeks ago, the Supreme Court handed down a decision reversing the lower court decisions, finding that the FCC had exceeded its statutory powers. The New York State Public Service Commission was especially pleased by this decision because members of our staff played a major role in drafting the briefs on behalf of our national association, and because one of our lawyers was selected to make the oral argument. The Supreme Court ruling was decisive and firmly rejected the FCC rationale for preemption of state regulation of intrastate telephone service. The Court found that Congress had clearly intended to set up a system of dual regulation and was aware that such a system would result in

tensions between the federal and state jurisdictions. The Court concluded, therefore, that the FCC does not have the power to preempt the states merely because state and federal regulatory policy are not consistent. The Court did not question the FCC's depreciation policy nor its contention that preemption would further federal telecommunications policy, but found that Congress had consciously and clearly denied the FCC that power.

The implications of the recent Supreme Court decision are not clear. It certainly can be argued that it undermines the authority of several previous Court decisions approving FCC actions which impinge upon the jurisdiction of state commissions. However, I doubt that what has already been done by the FCC will be undone. What the decision will ensure is a much more cooperative attitude on the part of the FCC and a much greater reluctance to try to dictate policy to the states. I see this as beneficial. First, because it is required by federal law, which should be followed even if it presents an impediment to the efficient implementation of federal telecommunications policy. As the Supreme Court noted in the Louisiana case, if the law is not working it must be changed by Congress, not the FCC or the courts. Second, I believe that the FCC's fears that without a single policy dictated from Washington the nation's telecommunications system will suffer are groundless. Over the years the states have themselves demonstrated enlightened views with respect to telecommunications policy and the benefits of economic regulation and competition. The states appreciate the

dynamic nature of the telecommunications market and respond to the needs of companies operating within that market. Indeed, state regulators better understand the needs of the people and industry in their states and the pace at which change would be politically acceptable and not counterproductive. Also, different approaches to the development of a competitive environment could result in creative proposals by some states which might benefit others.

With specific reference to the depreciation issue, I believe that concerns with respect to continued state regulation are without any reasonable basis. A story in The New York Times yesterday referred to fears expressed by experts that state regulation of depreciation rates could deny phone companies the money necessary to modernize and maintain their facilities, thus rusulting in phone systems deteriorating in the same manner as many mass transit systems have. I believe this assessment is incorrect for several reasons. First, plant replacement by telephone utilities has generally been financed essentially through internally-generated funds. Second, these companies right now are large and very healthy. And third, plant replacement decisions turn on companies' level of earnings. While depreciation accounting will affect earnings to some degree, it is not a controlling factor. More importantly, local electric, gas, and telephone systems have been very well maintained over the years under state regulation without any help from federal regulators and I am certain that will continue to be

the case in the future.

I would like also briefly to comment on the AT&T Consent Decree and its oversight by Judge Greene, because I see a parallel between this and the overextension of FCC jurisdiction. The Decree resolved an antitrust action by the Justice Department against AT&T and resulted in the divestiture by AT&T of its local operating companies. I have no problem with that basic result but I am concerned with the extent to which the Decree sought to regulate activities of the local operating companies. These companies were not parties to the action since they did not exist. And I do not believe that it is reasonable to assume that as separate entities they pose the same antitrust threat as was posed by a unified AT&T. Thus, I believe that the extensive restrictions placed on local operating companies by the court were both unwarranted and unnecessary and that the responsibility to regulate the activites of local operating companies should have been left to the states.

Also disturbing is the system that has evolved under which Judge Greene has become the nation's telecommunication's "tsar," who must review and approve policy decisions which relate to the provisions of the Consent Decree. I see such oversight by a judicial officer as totally inappropriate. His function was to resolve a specific legal controversy, not to oversee the development of national telecommunications policy. Aside from being inappropriate, Judge Greene and his very small staff are not equipped, nor should they be, to exercise this function.

Just as the FCC became frustrated with a statute which hindered its ability to implement what it saw as good policy, and assumed authority it did not possess, I believe that Judge Greene is attempting to fill a vacuum perceived to have been created by the failure of Congress to enact new telecommunications legislation specifically dealing with divestiture and competition. In government, unlike physics, vacuums should not always be filled. The failure of one branch of government to act does not justify another branch coming in to assume its responsibilities. Furthermore, it's not clear that a vacuum does exist; the FCC and state commissions could probably handle the issues now being referred to Judge Greene. In any event, I think the crucial point is that in the long run, the people of this country would be better off if the current legislation is adhered to and if jurisdictions assigned to the various regulatory agencies are respected, rather than having telecommunications policy developed by a group of well-intentioned experts at the FCC or by a single judge, no matter how able.

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As someone who has dwelt primarily in vineyards other than those where telephones grow, I have been watching the preemption phenomenon from a somewhat different perspective, perhaps, than Chairman Gioia and many others. But we haven't seen anything terribly different up to now. The situation is, as Professor Noam described, one that has been moving evermore in the direction of increased federal preemption. Like him, I find it a very disturbing phenomenon. It seems somehow that, unlike the classic case where some kind of integral federal scheme is put into place and local meddlers try to do something to upset it, preemption has burst out of its boundaries in recent years and has been applied even where there is no scheme to be protected. The FCC has been particularly guilty of this. It kind of buzzes around, lights down somewhere and says, "No, you can't do that," then buzzes away to do it again in some other area, on some other occasion, very often without really having any sort of continuing involvement or concern for the consequences of its preemptive action. And what it leaves behind may not only be chaotic, but also often quite contrary to some of the very principles that are supposedly guiding the FCC in areas where it is implementing policy on some sort of rational basis.

We've seen, in the last decade or so, several policies being pushed very strongly by the FCC (and not just the FCC). We've seen a very strong trend toward deregulation cut across pretty much every area that the Commission and other federal regulatory commissions are involved in. We've also seen particular concern in the communications field for fostering competition and trying to adhere to policies that encourage new entry and create circumstances under which both new and old entrants have an opportunity to compete for consumer dollars which, theoretically, ought to then lead to better service and a better situation than one imposed from on-high by regulators. But very often, preemption has the effect of contradicting these principles, tending particularly to resolve the inherent conflicts that sometimes exist between the deregulatory policy and the "competitive" policy, which do not necessarily always go hand-in-hand. We may deregulate at the expense of encouraging competition or we may, in order to encourage competition, regulate in contradiction to policies that favor deregulation. The tendency in these preemption cases is to favor, almost blindly I fear, the "deregulatory" policy over the "competitive" policy. Often, in spite of all the talk about "level playing fields" and "conditions fostering entry," the effect may be to create some very <u>un</u>level playing fields.

I see some possible implications in the most recent Supreme Court case, but implications with very limited application to non-telephone depreciation areas. For those who may share my

views, the fact that there <u>are</u> some implications may be the good news, but I think the bad news is that they will not really reach very far. For one thing, the decision in "Louisiana Public Service Commission vs. FCC" does not really shake up the basic concept of federal preemption. There's nothing there that suggests any inherent limitations on the general powers of the federal government. The case arose under a section of the Communications Act in which--in contrast to many of the other areas in which preemption is an issue--Congress expressly dealt with the separation of power between federal and state authorities along the lines that Chairman Gioia has pointed out. The decision is very much one of interpreting what the significance of Congress's action is for the particular kind of preemption exercised by the FCC over states' regulation of depreciation. I would be very hesitant to find in that decision any stemming of the overall trend toward federal preemption of state regulation of communications, or of any other area.

However, there are some areas where preemption has been and may again become an issue, where the particular circumstances of a decision may come into play and bring about a lessening of the opportunities for federal preemption of state regulation. Although I don't toil in the telephone vineyards, I do toil out in the cable vineyards, and there I find that because of an ever-increasing confluence between the activities of the cable and telephone industries (which will likely become even greater), more state regulatory involvement, or decisions about state

regulatory involvement, in these areas may be on the horizon as companies start to cross over and invade each other's territory. There are a number of areas in which this sort of thing has already happened and a number of others where we might expect it to happen. For example, telephone companies might in the future simply decide to become cable operators, although at the moment there are cross-ownership limitations on this in all but certain sparsely populated rural communities. And to the extent that the telephone company in question is subject to the Modified Final Judgment, there may be some limits stemming from that as well. Telephone companies may also get involved with cable through building and perhaps leasing back cable systems--this sort of thing has already begun--or through providing interconnection facilities for cable systems. In that these cable systems or interconnections may involve facilities that the constructing telephone company will also use directly in its own operations, questions may arise as to the extent to which local authorities would regulate the way in which the telephone companies make use of those facilities, what rates they may charge, and so forth.

On the other hand, the cable industry is already making use of telephone company facilities. For example, pay-per-view, where you telephone in your order for a program; security services, where--in spite of all the talk 5 to 10 years about the wonders of interactive cable systems--the fact is that the uplink is almost invariably on a telephone line, so if the cable company has included in its package of services a medical, fire, or

burglar alarm system the alarm goes out over a phone line. Direct merchandising, which is a very hot item right now in the cable industry, with several networks already in place and others forming, also makes use of telephone lines for uplink connection.

Finally, there is the area of perhaps the most controversy in the area of state regulation, the use of cable facilities, particularly institutional networks, to provide data communications services or the leasing of facilities to long-distance carriers for termination services that can bypass local telephone networks. There, the dispute has already been raging for several years as to the extent to which state regulatory authorities may impose requirements on the cable operator who wishes to enter into such an agreement. The dispute has centered around Cox Cable in Nebraska, which through a subsidiary known as Comline has established services both in local intrastate data transmission services and local termination services for interstate services provided by an interstate long-distance carrier. The Nebraska Commission, trying to deal only with the intrastate data communications service question, attempted to impose entry restrictions upon the cable operator, requiring it to get state commission approval to move into this line of business. The FCC, however, stepped in and said that Cox could not be subjected to that level of state regulation. The immediate issue arising--about which we may yet hear more, if my speculation is correct--is that the Comline decision is now in

danger under the new Supreme Court ruling in "Louisiana Public Service Commission." As it did in the depreciation case, in its Comline decision the FCC relied on the argument that the use of the same facilities for interstate and intrastate services meant that it could preempt state regulation of entry into the intrastate line of business because of the tremendous impact that imposing entry regulation might have on federal policy, which was asserted to be the encouragement of competition through making alternative ways of interconnecting to the national communications system available to end users.

It's too soon to tell what the outcome of this will be. It may be, for example, that the Comline decision per se will stand because one of the grounds on which the FCC was the view that because the service being offered by Comline was not a common carrier offering, Section 152 simply did not apply. So it might stand up. But beyond that, the reasoning in "Louisiana Public Service" seems very much in jeopardy. The key point here is that in the case of depreciation, the FCC has created a system of dividing regulatory authority between federal and state authorities, and the Court has stuck up for that decision, saying, however, that this can't be done in a way that's inconsistent with what Congress said. Certainly, because the FCC has the Supremacy Clause on its side, they're almost invariably the ones that try to grab all the power.

The lesson that might come out of this and apply to further preemption issues either in the telephone industry or in areas of

overlap is that it may be desireable to have Congress speak more definitely not only on this particular question but on other areas as well and draw the line more neatly between state and federal authority. Some have speculated that had there been no Cable Act and had this decision come down as it did, it might well have raised questions as to the extent to which many of the FCC's preemptive decisions on cable could have avoided conflict with Section 152. But Congress, in the Cable Act, did set guidelines for state and federal authorities, and although this has by no means answered every question--and indeed cast some interesting clouds over "Louisiana Public Service"--had the Act not been in place, we might have had some very difficult questions to face in the wake of that decision. If Congress would address such questions in more detail and in more areas we might see not only a decrease in uncertainty, but also an improvement in the way in which the overall regulation of telecommunications at all levels is carried out. Thank you.

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Chairman Gioia recognizes that today's level of technology permits competition in many telecommunications markets and that the states, being close to the markets, close to the data, have an extremely important role to play in regulation and possibly in the transition from regulation to deregulation. I agree with his comment that "if the law is bad, Congress should change it." I might amend that to say "if the law is bad, I hope _somebody_ will change it." This is what I would like to focus on in some of my remarks. Rather than focusing on who has jurisdiction, I'd like to look at what the issues are.

Considering the period between 1934 to about 1968: why did state and federal regulators get along so well? Their goal, simply put, was the development of efficient telecommunications systems with affordable local rates. This was achieved through the maintenance of a monopoly market and a policy of cross-subsidization, whereby large users paid a disproportionate share of what Paul refers to as the "non-traffic sensitive costs." Also, some of the burden was borne by users of what were determined to be non-essential services. As long as the technology was such that there was no chance of competition, the system could be maintained. I should add that there was another factor, which is close to my heart, and that is that depreciation

charges tended to be pushed more and more out into the future. So we had a huge debt appearing in the depreciation area.

Given rapid changes in technology, this permitted a competitive market structure to open up in many different areas. Now many analysts believe that competition and regulation do not mix very well; according to Alfred Kahn, there are "irreconcilable differences" between the two. But currently, the marketplace is being forced to accommodate both. Most papers I read, most studies I have seen, tend to argue that the two just won't mix well. Regulation tends to be extremely slow; we've had some actions going on at the FCC for more than ten years. When they do take action they go into court, and that may take another 3 or 4 years. By the time a decision is reached, market conditions may have changed completely.

But this is still metaphysics. None of us is really certain whether or not there can be a happy mix between competition and regulation in different areas. Certainly many of the regulatory policies that were working, operable, and efficient in the past are not going to work under competitive market structures. So to this end I can see regulation at both the state and federal level playing an important part in managing a transition toward deregulation of a certain set of services, and possibly even of all services.

Let me throw out the following guidelines for discussion and consideration. First, prices and depreciation rates eventually have to reflect costs and market realities. With respect to the

Supreme Court decision, I'm very happy for the states and particularly for New York. But I'm not too happy that the case involved a certain technical issue, a particular argument on technical depreciation that the FCC favored and many states were against. That position was formulated back in the late 1970s and early 1980s. The states may have changed their minds now that we're in the mid-1980s and the markets have changed significantly. But basically, present depreciation policies, whether federal or state, tend to be very conservative. So if you think about an asset having a certain life cycle, usually what happens is that most of the depreciation is put at the end of its life cycle, no matter what accounting method is used. The best chance for recovering the value of an asset is in its early life. To the extent that regulators forecast correctly they will then distribute depreciation over the life of the asset. Now given a rapid rate of technological change, this is just not consistent with a competitive market structure. You can work a monopoly; monopoly will hide a lot of sins and errors. But this isn't going to work in an area with a competitive market structure, where prices have to reflect current costs. This is a problem that has to be addressed no matter what jurisdiction is involved. The problem doesn't go away if we make it state or federal or if Judge Greene takes over.

Second, we have a problem--especially in Judge Greene's court--with respect to allowing exchange companies to go into competitive businesses. Now as an economist I really can't see

any reason why local exchange companies can't go into any business, as long as they don't own a bottleneck. Now to the extent that there are bottlenecks there, then the companies have to develop such means as open architecture to allow competitors to have commonly-equipped interfaces, as per the recent SEC decision.

Third, if and when they are allowed to move into competitive businesses, regulated firms should not expect that they will be able to use any profits to subsidize local services. By the very nature of competition those profits tend to be short-lived. Now the local exchange ratepayer may benefit indirectly to the extent that there are economies of scale and scope involved and that the telephone company is able to offer multiple services. So if overhead, for instance, can be spread over a larger scale of output and a larger variety of output, the local exchange customer will be able to benefit due to lower rates.

Fourth--and this I draw from my experiences as an economist--the Federal Communications Commission could probably save the country a tremendous amount of money if it would stop trying to distribute unallocatable costs. They've just opened up another docket to try to resolve the problem of how to allocate joint costs between various services in a fair and efficient manner. But there _isn't_ any way to do it, other than creating some arbitrary accounting rule. And the FCC is going to allocate something simply on the basis of a show of hands, which is completely inadequate.

Fifth, I'd like to mention the concerns expressed both by the Modified Final Judgment and in regulatory economics texts regarding the necessity of regulating or overseeing a multiple service business, in this case a business that has a monopoly in some markets. If you allow a local exchange company to enter competitive markets while they have a monopoly in others, they can subsidize their competitive divisions with monopoly profits. But why would they want to do that? Why would a company want to go into an area where it's going to lose money? Why would it charge a price lower than incremental costs?

The only rationale I can envision is that of predatory intent, and "predatory intent" means that one would expect them eventually to force out all competitors with lower prices. There are several conditions that must be fulfilled simultaneously for this to occur. One, the firm must be much larger in financials than its rivals. Two, there must be difficult barriers to entry, so that once everybody has been forced out, they can't get back in once prices have gone back up. Three, consumers have to be pretty stupid; they can't try to tie the company to a long-term contract, they can't see that they're being offered lower prices on a one-year contract in order that the firm might drive out its rivals and "sock it to them" later.

There was a Supreme Court case in March 1986, "Matsushita vs. Zenith Corporation," in which American television manufactureres argued that the Japanese were entering the American market using monopoly profits they had made in Japan to

subsidize entry into the American market. The Court, however, couldn't see any rationale for the Japanese companies to operate that way. In fact, they said in reviewing the literature and looking at empirical studies that have been done that they couldn't find any documented cases of predation and that it is very unlikely. I suggest the same. I just don't see why a company would expect to lose money in the short run given the market conditions that exist today. For Nynex or New York Telephone, for example, to enter into other markets, we have to consider the competition of IBM, MCI, AT&T... It would just be irrational to expect that we could chase everybody out in order eventually to raise prices and make a profit.

Finally, I'd like to see regulators and companies get together to develop experimental regulatory schemes and implement them on a trial basis, to try something new to see if it works. For instance, they could designate whether or not certain services are to be detariffed, made price-flexible, made price-regulated. Similar actions have already been taken in New York, Vermont, Illinois, and Oregon, at least with respect to trying new, creative approaches to regulation and letting the market determine whether or not these are to be efficient and benefit the basic ratepayer.