
Carriers of Last Resort – An Evolving Concept

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Overview

- Pre-Competition COLR duties
- New stresses from competition
- Suggested analytical structure for COLR issues

Pre-Competition COLR Duty

- Defined: Any COLR must provide local exchange service to a customer seeking to be served within the COLR's service area.
 - Sometimes called "duty to serve."
- A duty imposed by state law.
 - Often implied by a "Certificate of Public Convenience and Necessity" or similar certificate.

Two Dimensions of the COLR Duty

- Who?

- Any customer who:

- Pays a uniform connection charge (averages about \$40).
 - Doesn't owe money from prior services.

- Where?

- All parts of service area

- This includes high cost areas, such as “donuts” far from central offices.
 - Line extensions are an exception. Customer seeking long line extensions often must pay a large “connection” or “line extension” fees.

Other COLR Duties Imposed by States

- Carrier must offer prescribed features of local exchange service.
 - E.g.: 911; operator services
- Carrier must comply with service quality standards.
 - E.g.: Network downtime; dropped calls
- Carrier must obtain commission approval before exiting from market.

Which Carriers are COLRs?

– Two Strategies

- Option 1 – Incumbent Local Exchange Carriers (ILECs) only
 - ILECs had non-overlapping service areas.
 - ILECs had unique duties, including COLR.

- Option 2 – all local exchange carriers
 - All carriers had Certificates of Public Convenience and Necessity (CPCNs) or equivalent; and therefore all had a duty to serve, impartially, any person who requested service.

New Stresses from Competition

1. Carrier failures and mass migration rules
2. Asymmetry for ILECs
3. Ambiguity for CLECs
4. Federal limits on state jurisdiction
5. Federal universal service laws may increase COLR duties
6. Becoming or ceasing to be a COLR

1. Carrier Failures

- CLEC failure - “duty to serve” at a new scale.
 - Impending financial failures would interrupt service for many customers, including hospitals and other important institutions.
- States developed “mass migration” procedures to protect local exchange service continuity.
 - A carrier at risk of failure is required to give advance notice to commission, and perhaps customers.
 - The COLR-ILEC was required to accept the failing carrier’s customers, at least temporarily.
 - Optional Features:
 - Manage subsequent migration from COLR to other CLECs.
 - Compensate the COLR.

2. Asymmetries for ILECs in Duties and Benefits

- COLR must maintain facilities “just in case.”
 - COLR must stand ready to serve all individual customers who ask to return.
 - COLR may be required to accept returning customers in a “mass migration” following a competitor’s failure.
- But revenues lost.
 - Customers free to leave.
 - No exit fee (or substantial return fee).
 - Often the lost customers are the most profitable.

3. Ambiguities for CLECs

- Some states impose COLR duties on CLECs.
 - But, CLECs may actually serve only some customer classes and some geographic areas within its franchise area.
 - CLECs also have fewer duties to other carriers.
 - E.g.: No duties to negotiate and interconnect under § 251(c).
 - Query: If a CLEC or wireless carrier is assigned COLR duties, and another competitor fails, can the COLR realistically accept a mass migration of new customers?

4. Federal Limits on State Jurisdiction

- Federal law protects certain carrier classes by limiting state jurisdiction. For example:
 - Federal statute prohibits regulating entry or rates of wireless carriers.
 - One court has prevented states from requiring CPCNs from nomadic VoIP providers.
- These federal limits may constrain state commissions from acting effectively:
 - When the protected carrier fails, the state may not have authority to mandate compliance with mass migration procedures.
 - When another carrier fails, the state may not have authority to mandate that the protected carrier accept a share of the stranded customers.

5. Federal Universal Service Law May Increase COLR Duties

- Designation as “Eligible Telecommunications Carriers” (ETCs) is prerequisite to receiving federal high cost support.
- States may designate ETCs
 - Most states perform this function.
- Once designated, an ETC may have some COLR duties
 - FCC has said that carriers receiving support:
 - *“are required to provide the supported services throughout the service area for which the designation is received and to advertise the availability of such services and their rates using media of general distribution.”*
 - Under a specific federal statute, a carrier may have to accept some COLR duties in unserved areas. This probably applies only to ETCs. (§251(e)(3)).

6. New Situations May Require Adding or Dropping COLR Duties

- **Newly built areas**
 - ILEC doesn't have facilities, or perhaps even the ability to install facilities.
 - CLECs begin to function like ILECs.
 - Does an exclusive right-of-way abate COLR duties for an ILEC?
- **Overbuilds of ILEC areas**
 - Some CLECs overbuilt and took away nearly all customers.
 - Mid-Rivers Cooperative in Montana
 - Some states may eliminate ILEC duties as COLR.

Six COLR Issues for States:

1. Who is the COLR?
2. What is the COLR's duty?
3. Should COLRs be compensated?
4. Compensated for what?
5. How much?
6. Who pays?

1. Who is the COLR?

- Clarify whether COLR duties apply to ILECs only, or to all LECs who provide dial tone.

- Define rules for adding and removing COLR duties.
 - Adding COLR duties for CLECs
 - CLEC overbuild supplants ILEC as dominant carrier.
 - New build areas and exclusive contracts.
 - Eliminating COLR duties for ILECs
 - ILEC exits where new build areas and exclusive contracts prevent it from building.

2. What is the COLR's Duty?

A. Define the protected customer

- Customer class limits
 - Business only?
 - Large business only?
- Quantity limits
 - Mass migrations?
- Wholesale service to other carriers?
 - E.g. wireless backhaul

2. COLR's Duty (cont.)

B. Where is the protected customer?

- Allow geographic discrimination?
 - Wherever COLR has facilities?
- Mandate service in high-cost areas with no competition?

C. Service at a regulated price?

- Just and reasonable rates?
- Extra charge for line extensions?

D. What other duties?

- Minimum service elements
- Service quality standards
- Consumer complaint jurisdiction
- Supervised market exit

3. Should COLRs Be Compensated?

- Pro:

- Protects public health and safety
- Competitively neutral if it removes asymmetry between duties and revenues.

- Con:

- Upsets competitive equilibrium between ILECs and CLECs.
- May require additional legislative authority.

4. Compensated For What?

- Two Distinct Roles:

1. Backstop for competition

- Stand ready for competitor failures and mass migrations.
- Provide facilities for wholesale purchase by other carriers.

2. Serve high-cost areas

- Serve uneconomic outlying areas that have no facilities-based competitors.

5. How Much Compensation?

- At what scale is compensation calculated?
 - ILEC wire center?
 - Easier to perform calculations
 - Doughnuts and holes
 - May improve incentives to serve outlying areas
- How set amount?
 - Auctions?
 - Models?

6. Who Pays - Options

- ILEC (or its customers)
 - Inaction may achieve this
- CLECs (or their customers)
 - E.g. Florida's "interim mechanism"
- All intrastate telecom customers
 - E.g. State universal service fund
- Exiting customers
 - E.g. Retail electric competition
- Returning customers
 - E.g. Retail electric and gas