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# Regulation by TSLRIC: Economic Effects on Investment and Innovation

## I. Introduction

A number of countries have adopted policies to cause dominant network providers to unbundle their networks to provide network elements to new competitors. Two important questions arise with respect to these policies: the degree of network disaggregation that unbundling will cause and the regulated price of the unbundled elements. Economic principles suggest that only the "essential facility" elements of the network, which cannot be economically reproduced in the short term by new competitors, should be unbundled by regulation.<sup>1</sup> It is these essential facility elements that provide the barriers to competition by new entrants. However, if unbundling goes beyond these essential facility elements, new entrants will not have an economic incentive to invest in their own networks. Thus, economic analysis leads to the recommendation that the local network should be unbundled with respect to its essential facility elements, at least in the short run, but that other networks' such as long distance and wireless networks should not be unbundled since they do not contain essential facility elements.<sup>2</sup> Overall, long distance and wireless networks should not be regulated so long as competitive entry is sufficient to keep prices at competitive levels.<sup>3</sup>

These economic principles have been recognized by Canadian regulators who require an incumbent local exchange carrier (ILEC) to unbundle its residential loops, but not to unbundle its switching or their transport facilities.<sup>4</sup> Furthermore, the Canadian decision has a sunset provision of 5 years, which is a very desirable attribute to cause new entrants to construct their own networks. To the contrary, the U.S. Federal Communications Commission (FCC) has chosen a high degree of network disaggregation where an ILEC must provide unbundled elements for all services that it provides. The FCC did not provide for a sunset provision in its regulation. Thus, the incentive for new competitors to invest in their own networks is significantly less in the U.S. than in Canada.

Most regulatory authorities permitted negotiation between the incumbent provider and the new entrants on the prices of unbundled elements.<sup>5</sup> However, if the parties fail to reach agreement the regulatory authorities will impose price regulation, typically based on a forward looking cost standard. The cost standard used is typically based on the forward looking economic concept of Long Run Incremental Cost (LRIC). The particular standard often used is "Total Service LRIC" (TSLRIC) which also includes the fixed costs associated with the service. Some measure of common costs is often added to the LRIC measure so that the incumbent provider can recover costs not directly attributable to the service.<sup>6</sup>

TSLRIC is an incorrect cost measure to use to set prices for unbundled elements. TSLRIC assumes that cost of invest-

ment in telecommunications networks are fixed but not sunk. The reality of telecommunications networks is that much of the investment is sunk and irreversible.<sup>7</sup> For instance, much of the investment in copper or fiber access to residences is likely to be sunk cost because it cannot be redeployed if a substitute technology is used. In telecommunications regulation, a subset of sunk investments are sometimes called potentially stranded assets. Uncertainty has a powerful effect on investment decisions with sunk and irreversible investment, because if demand is not sufficient or prices decrease, the investment will not earn an economic return. To the contrary, if an investment is fixed, but not sunk as assumed by TSLRIC calculations, the asset can always be (costlessly) redeployed and used to provide an alternative service.

I demonstrate in this paper that use of TSLRIC creates negative economic incentives for new investment and for innovation in telecommunications.<sup>8</sup> If the new investment succeeds, the competitors to the incumbent can purchase the unbundled element at cost, as set by TSLRIC. If the new investment does not succeed, the competitor does not bear any of the cost, but the shareholders of the incumbent bear the cost of the unsuccessful investment. Thus, the regulators force the incumbent to provide a free option on its investment to its new competitors. Modern economic and finance theory demonstrate the value of options. Regulatory use of TSLRIC causes these free options to be given to new competitors at the expense of the incumbent. The result is a level of investment and innovation by the incumbent below the economically efficient level. New services will then be provided at below economically efficient levels,

1) See Hausman and Tardiff, Efficient Local Exchange Competition, Antitrust Bulletin, 1995 for further economic analysis. The "essential facility" elements are also referred to as "monopoly building blocks".

2) Indeed, my academic research demonstrates that regulation of cellular telephone and long distance led to higher prices to consumers in the U.S. due to the signalling function of required tariff filings that decreased competition. Prices in both cellular and long distance decreased after the tariff regulation was eliminated.

3) Claims that regulation is required to keep prices from becoming "too low" from possible predatory pricing are incorrect and cause consumer harm from higher prices. Predatory pricing in long distance or wireless networks is extremely unlikely since it is not economically rational business behavior as I discuss in Hausman, Antitrust Bulletin, 1995.

4) CRTC "Local Competition", Telecom Decision CRTC 97-8, May 1, 1997.

5) This procedure has been adopted in the U.S., Australia, and Germany. For the description of the German framework, see Schaefer, Telecommunications Law, 1998.

6) For instance in Canada, a markup of 25% over TSLRIC is used.

7) Economists refer to a cost as sunk when the investment cannot be re-used or sold, except at a significant loss, if the firm exits the business.

8) See Hausman, Telecommunications: Building the Infrastructure for Value Creation, in: Bradley/Nolan (eds.), Sense and Respond, 1998, for a discussion of the important gains that have been realized by innovation in the Internet.

and consumers and businesses will be made worse off.<sup>9</sup> A markup above TSLRIC is required to provide the correct level of economic incentives for new network investment and innovation. The markup is significant if the proportion of sunk investment in overall investment for a given project is large.

## II. Current FCC Approach to Regulation of New Investment in Services

The *U.S. Congress* passed the Telecommunications Act of 1996 which was the first basic change in the regulatory framework for telecommunication since 1934. The Congressional legislation called for less regulation, more competition, and the most modern up to date telecommunications infrastructure: "...[T]o provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition".<sup>10</sup> The *FCC* has instituted numerous regulatory rulemakings to implement the 1996 Telecommunication Act. The most important regulations so far have been the Local Competition and Interconnection Order of August 1996.<sup>11</sup> If implemented in its current form, the Local Competition and Interconnection Order will likely have serious negative effects on innovation and new investment in the local telephone network.<sup>12</sup> Similarly, use of TSLRIC-based cost regulation by other countries can also have similar negative effects on innovation and new investment in local telephone networks.

First, I consider the proper goal of regulation set prices in telecommunications. Most economists agree that regulation should be used only when significant market power can lead to unregulated prices well above competitive levels. The goal of regulators is then to set prices at "competitive levels". However, economists are much less explicit about how these competitive levels of prices can be estimated. Most economists would agree that perfect competition cannot yield the appropriate standard since prices set at marginal cost will not allow a privately owned utility

to earn a sufficient return on capital to survive. The large fixed costs of telecommunications networks thus do not allow the price equal marginal cost standard of perfect competition to be used.<sup>13</sup>

An alternative competitive standard has been proposed by Prof. *Baumol* and his co-authors, the "perfect contestability" standard. Prof. *Baumol* has proposed that the regulators should require firms to set prices as if "the competitive pressures generated by fully unimpeded and costless entry and exit, contrary to fact, were to prevail."<sup>14</sup> However, costless entry and exit presumes that no sunk costs exist, i.e. costs that cannot be recovered upon exit by a firm. This assumption of no sunk costs is extremely far from economic and technological reality in telecommunications where the essence of most investments is an extremely high proportion of sunk costs. Consider the investment by an incumbent local exchange carrier (ILEC) in a new local fiber optic network which can provide new broadband services and high speed internet access to residential customers. Most of the investment is sunk since if the broadband network does not succeed, the investment cannot be recovered. Thus, when either technological or economic uncertainty exists "perfect contestability as a generalization of perfect competition" cannot provide the correct competitive standard.

In a perfectly contestable market, if the return to an investment decreases below the competitive return, the investment is immediately removed from the market and used elsewhere. This costless exit strategy is always available in a perfectly contestable market. However, the actual economics of telecommunications investment could not be further from a perfectly contestable market. When fiber optic networks are constructed, they are in large part sunk investments.<sup>15</sup> If their economic return falls below competitive levels, the firm cannot shift them to other uses because of their sunk and irreversible nature.<sup>16</sup> Thus, the use of a perfectly contestable market standard fails to recognize the important feature of sunk and irreversible investments – they eliminate costless exit. Because of its failure to take into account the sunk and irreversible nature of investments, the contestable market model has nothing of interest to say about competition in telecommunications. An industry cannot be expected to behave in a manner that is fundamentally inconsistent with its underlying technological and economic characteristics.

One way to consider the problem is the situation of a new investment by an ILEC. Suppose a competitor wants to buy the unbundled elements associated with the investment. The ILEC could offer the new competitor a contract for the economic life of the investment – say 10 years for investment in the local loop. The price of the unbundled element would be the total investment cost plus the operating costs each year for the unbundled element. If demand did not materialize or prices fell, the new entrant would bear the economic risk of this outcome.<sup>17</sup> However, regulation by TSLRIC typically allows the new entrant to buy the use of the unbundled element on a month-by-month basis. Thus if demand does not materialize or prices fall, the ILEC has to bear the risk for the business case of the new competitor. Thus, the ILEC has been required by regulation to give a free option to the new entrant, where an option is the right but not the obligation to purchase the use of the unbundled elements. The monthly price of the unbundled element should be significantly higher than the 10 year price of the element to reflect the risk inherent in the sunk investments,

9) For a discussion and estimation of particular cases where regulation cost U.S. consumers and businesses billions of dollars due to regulatory delay of new services, see *Hausman*, Valuation and the Effect of Regulation on New Services in Telecommunications, Brookings Papers on Economic Activity: Microeconomics, 1997.

10) Conference Report to the Telecommunications Act of 1996, p. 652.

11) *FCC*, First Report and Order, CC docket No. 96-98 and 95-185, August 1, 1996.

12) The *FCC* is being challenged by the incumbent local exchange carriers (ILECs) in Federal Court. The case has been heard, but not yet decided, by the *U.S. Supreme Court*. Two issues are under consideration: whether the *FCC* has improperly usurped the rights of states to set regulated rates for local competition and the pricing framework used to set these rates. I only consider the latter issue here.

13) Economists have long agreed on this point. See e.g. *Kahn*, The Economics of Regulation, 1988, for a discussion.

14) *Baumol/Sidak*, Toward Competition in Local Telephony, 1994, p. 28, and pp. 31 ff.

15) The electronic used in the networks need not be sunk, but much of the actual dark fiber will be a sunk investment.

16) This feature of sunk and irreversible investment has been widely recognized by economic research in the past 10 years. See *MacDonald/Siegel*, The Value of Waiting to Invest, Quarterly Journal of Economics 101, 707 ff., 1986, and for a recent comprehensive textbook treatment see *Dixit/Pindyck*, Investment Under Uncertainty, 1994.

17) The contract (or regulation) could allow the new entrant to sell the use of the unbundled element to another firm if it decided to exit the business.

or equivalently the value of the option given to the new entrant.<sup>18</sup> Regulators to date have not incorporated the value of the option into their price setting.

Another way to consider the problem of regulation set prices is to allow for the existence of the (all-knowing) social planner. Suppose the social planner were considering a new investment in a telecommunications network where the features of sunk and irreversible investments is important. The social planner wants to maximize the value of the social welfare integral over time subject to uncertainty. However, the investment is subject to both technological and economic uncertainty so that the cost of the investment may (randomly) decrease in the future and because of demand uncertainty the social planner does not know whether the investment will be economic. In making an optimal decision the social planner will take into account the sunk and irreversible nature of the investment since if the new service fails, the investment cannot be shifted to another use. Thus, assuming that sunk costs do not exist, which is the perfect contestability standard, when sunk costs are an extremely important part of the economic problem will lead to incorrect decisions and decreased economic efficiency. The economy will not reach its production possibility frontier.

### III. Regulation Set Prices for Unbundled Elements

Under the Telecommunication Act of 1996 the FCC mandated forward looking cost based prices for competitors to use unbundled LEC facilities.<sup>19</sup> The FCC did not permit any markup over cost to allow for the risk associated with investment in sunk assets; instead, it used a TSLRIC type approach that attempts to estimate the total service long run incremental cost on a forward looking basis.<sup>20</sup> TSLRIC attempts to solve the perfect competition problem that price cannot equal marginal cost by allowing for the fixed costs of a given service to be recovered. TSLRIC allows for recovery of the cost of investment and variable costs of providing the service over the economic lifetime of the investment. However, TSLRIC makes no allowance for the sunk and irreversible nature of telecommunications investment, so that it adopts the perfect contestability standard. The perfect contestability standard provides the incorrect economic incentives for efficient investment once technological and economic uncertainty exist. The FCC has chosen the incorrect standard for setting regulated prices. TSLRIC will lead to less innovation and decreased investment below economically efficient levels.

#### 1. The TSLRIC Standard and R&D and Investment in New Services

The first and easiest example that I consider is R&D and investment in new services. Many new telecommunications services do not succeed, as recent failures include Picture-phone services (AT&T and MCI within the past eight years) and information service gateway services offered by many ILECs. These new gateway services required substantial sunk costs of development because creation of the large data bases to provide information service gateways is substantial. Now if a new service is successful, under TSLRIC regulation, an ILEC competitor can buy the service at TSLRIC. Thus, for a successful new service the ILEC recovers at most its cost. For unsuccessful services, the ILEC recovers nothing and loses its sunk investment. Thus, the

TSLRIC regulation is the analogue of a rule which would require pharmaceutical companies to sell their successful products to their generic competitors at incremental cost and would allow the pharmaceutical companies to recover their R&D and production costs on their successful new drugs, but to recover nothing on their unsuccessful attempts.

This truncation of returns where a successful new telecommunications service recovers its cost (but no more), and unsuccessful new services recover nothing decreases economic incentives for innovative new services from regulated telecommunications companies. By eliminating the right tail of the distribution of returns as demonstrated in Figure 1, TSLRIC regulation decreases the mean of the expected return of a new project. For example, consider a project with returns,  $\mu$ , which follow a normal distribution with mean  $\mu$  and standard deviation  $\sigma$ , the expected value of the return when it is truncated at cost  $c$  is:  $E(y|y < c) = \mu - \sigma M(c)$  (1.1) where  $M(c)$  is the inverse Mills ratio evaluated at  $c$ .<sup>21</sup> Thus, the tighter is the cost standard, the lower are the incentives to innovate, as expected. More importantly, note that as the returns to the innovation become more uncertain, the expected return and the incentives to innovate also decrease. Thus, even in the absence of sunk and irreversible investments, a TSLRIC pricing policy will decrease the economic incentives for investment in innovative services, and a TSLRIC policy may eliminate these economic incentives to invest altogether.

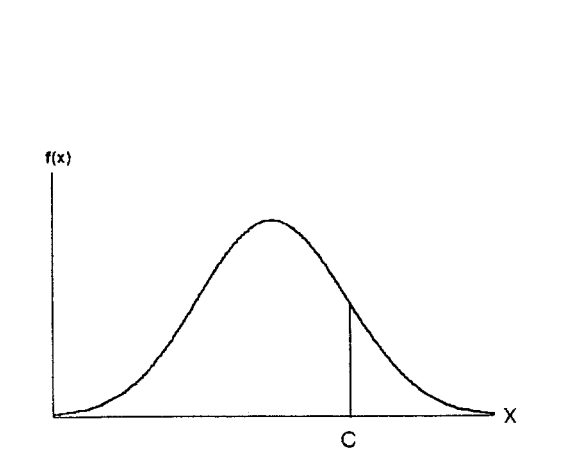


Figure 1

Regulators could allow for something similar to patent protection for new services to provide economic incentives for ILECs to innovate.<sup>22</sup> However, this policy option is a recipe to hold up new telecommunications services for ten

18) In contracts between unregulated telecommunications companies, e.g. long distance carriers, and their customers, significant discounts are given for multi-year contracts.

19) The FCC decision is currently under appeal. In the FCC proceeding I provided testimony on behalf of the ILECs.

20) The FCC chose a variant of TSLRIC, called TELRIC for total element LRIC. However, the essential economic problem of TSLRIC also exists in TELRIC. The FCC is currently constructing a TELRIC model to be used in future regulatory proceedings.

21) The inverse Mills ratio is the ratio of the density function and distribution function of the standard normal distribution evaluated at  $(c - \mu)/\sigma$ . The inverse Mills ratio  $M(c)$  increases monotonically as  $c$  decrease for given  $\mu$  and  $\sigma$ .

22) The FCC chief economist, Dr. Farrell, Competition, Innovation and Deregulation, 1997 considered this option.

years or more with enormous consumer welfare losses as occurred with voice messaging and cellular telephone.<sup>23</sup> Currently, it takes the *U.S. Patent Office* over two years to grant a patent with longer time periods not uncommon. However, no opponent of the patent is allowed to be part of the process. In a regulatory setting where competitors would attempt to delay the introduction of new services as happened with both voice messaging and cellular telephone, I would expect much longer delays. Thus, the patent approach will not solve the problem. A better approach would be not to regulate new services. Given the large welfare gains from new services and price cap regulation for existing services, ILECs should be permitted to offer new services with no prior approval or price regulation. The gains in consumer welfare from successful new services would lead to significant gains for consumers. Attempting to „fine tune“ prices of new services through cost based regulation will lead to overall consumer losses. However, regulators find it extremely difficult not to regulate any new service of a regulated company.

**2. The Effect of Sunk and Irreversible Investments**

TSLRIC assumes that all capital invested now will be used over the entire economic life of the new investment and that prices for the capital goods or the service being offered will not decrease over time. With changing demand conditions, changing prices, or changing technology, these assumptions are not necessarily true. Thus, TSLRIC assumes a world of certainty where the actual world is one of uncertainty in the future. Significant economic effects can arise from the effects that the sunk nature of investment has on the calculation of TSLRIC.<sup>24</sup>

Consider the value of a project under no demand uncertainty with a risk adjusted discount rate of  $r$  and assumed known exponential economic depreciation at rate  $\delta$ . This assumption on depreciation can be thought of as the price of the capital decreasing over time at this rate due to technological progress. Assume that price, net of the effect of economic depreciation of the capital goods, is expected to decrease with growth rate  $-\alpha$ .<sup>25</sup> The initial price of output is  $P$ . The value of the project is:

$$V(P) = \int_0^{\infty} \lambda \exp(-\lambda t) P \frac{1 - \exp(-\delta t)}{\delta} dt = P / (\lambda + \delta) \tag{1.2}$$

23) See Hausman, Antitrust Bulletin, 1995, for a discussion for consumer losses from this policy.

24) This discussion follows Hausman, Reply Affidavit of Prof. Jerry Hausman, FCC CC Docket No. 96-98 July, 1996. See also LaFont/Tirole, Competition in Telecommunications, Nov. 1996.

25) This factor arises due to changes in demand and changes in total factor productivity.

26) For simplicity, I am assuming only capital costs and no variable costs in this calculation. Variable costs can be included by reinterpreting  $P$  to be price minus variable costs which will lead to the same solution.

27) The FCC incorrectly assumed that taking account of expected price changes in capital goods and economic depreciation is sufficient to estimate the effect of changing technology and demand conditions; see the FCC "First Report and Order", para. 686. Thus, the FCC implicitly assumed that the variances of the stochastic processes which determine the uncertainty are zero, e.g. that no uncertainty exists. Under the FCC approach the values of all traded options should be zero (contrary to stock market fact), since the expected price change of the underlying stock does not enter the option value formula. It is the uncertainty related to the stochastic process as well as the time to expiration which gives value to the option as all option pricing formulae demonstrate, e.g. the Black-Scholes formula.

28) I do not derive this equation here since it is the solution to a differential equation. For a derivation see e.g. Dixit/Pindyck, Investment under Uncertainty, 1994, pp. 254-256 pp. 279-280, and p. 369. The parameter  $\beta_1$  depends on the expected risk adjusted discount rate of  $r$ , expected exponential economic depreciation  $\delta$ , and the net expected price  $-\alpha$ , and the amount of uncertainty in the underlying stochastic process. Note that this result holds under imperfect competition, not just under monopoly, as some critics have claimed incorrectly.

where  $\lambda = r + \alpha$ . Note that  $\delta$  is added to expression to account for the decreasing price of capital goods. This term, omitted from TSLRIC calculations, accounts for technological progress in equipment prices, which is one economic factor that leads to lower prices over time. Suppose that the cost of the investment is  $I$ . The rule for a competitive firm is to invest if  $V(P) > I$ . Equivalently from equation (1.2),  $P > (\lambda + \delta) I$ . The economic interpretation of this expression is that the price (or price minus variable cost) must exceed the cost of capital, which includes the change in price of the capital good to make the investment worthwhile.<sup>26</sup> Note that the net change in the output price and the price of the capital good both enter the efficient investment rule. TSLRIC calculations ignore the basic economic fact that when technological change is present, (quality adjusted) capital goods prices tend to decline over time. This economic factor needs to be taken into account or economic inefficiency will result. Furthermore, regulators should set realistic depreciation lives for telecommunications investment. In a competitive environment unrealistically long depreciation lives create economic disincentives for new investment by regulated companies because they will not recover a significant proportion of their investment.

Now, a TSLRIC calculation does not include  $\delta$ , but it instead assumes that the price of capital goods does not change over time. This assumption is extremely inaccurate. Take a Class 5 Central Office Switch (COS) for example. Ten years ago an AT&T Class 5 switch (5-ESS) was sold to an ILEC for approximately \$200 per line. Today, the price of AT&T 5-ESS switches and similar NTI switches are in the \$70 per line or lower range. A TSLRIC calculation would be based on the \$70 price. An ILEC who paid \$200 per line made the efficient investment decision when it purchased its COS. But TSLRIC, by omitting economic depreciation due to technological progress, leads to a systematically downward biased estimate of costs. Indeed, I estimate the economic depreciation of central office switches to be near 8% per year over the past five years, while the cost of fiber optic carrier systems has decreased at approximately 7% per year over the same period. The omitted economic factor  $\delta$  can be quite large relative to  $r$  for telecommunications switching or transmission equipment due to technological progress.

TSLRIC calculations makes the following further assumptions: (1) the investment is used at full capacity always, (2) the demand curve does not shift inwards over time, and (3) a new technology does not appear that leads to lower cost of production. Of course, these conditions are unlikely to hold true over the life of the sunk investment. Thus uncertainty needs to be added to the calculation because of the sunk nature of the investment.

I now account for the sunk nature of the investment and its interaction with fundamental economic and technological uncertainty. Given the fundamental uncertainty and the sunk nature of the investment, a "reward for waiting" occurs because over time some uncertainty is resolved. The uncertainty can arise from at least 4 factors: (1) Demand uncertainty, (2) Price uncertainty, (3) Technological progress (input price) uncertainty, and (4) Interest rate uncertainty.<sup>27</sup> Now the fundamental decision rule for investment changes to:

$$P^* > \frac{\beta_1}{\beta_1 - 1} (\delta + \lambda) I \tag{1.3} \text{ where } \beta_1 > 1 \text{ so that}$$

$$m = \beta_1 / (\beta_1 - 1) > 1.$$

The parameter  $\beta_1$  takes into account the sunk cost nature of the investment coupled with inherent economic uncertainty.<sup>28</sup> Parameter  $m$  is the mark-up factor required

to account for the effect of uncertain economic factors on the cost of sunk and irreversible investments. Thus, the critical cut off point for investment is  $P^S > P$  from equation (1.2).

To see how important this consideration of sunk costs can be, I evaluate the markup factor  $m$ . The parameters  $\beta_1$  and  $m$  depend on a number of economic factors. It can be demonstrated that as uncertainty increases, i.e. the variance of the underlying stochastic process,  $\beta_1$  decreases and the  $m$  factor increases. Also, as  $\delta$  increases,  $\beta_1$  increases which means that the  $m$  factor decreases. As  $r$  increases  $\beta_1$  decreases so that the  $m$  factor increases. *MacDonald/Siegel* and *Dixit/Pindyck* calculate  $m = 2$  so that, for instance,  $V^S = 2I$ . A TSLRIC calculation which ignores the sunk cost feature of telecommunications network investments would thus be off by a factor of two.

Using parameters for ILECs and taking account of the decrease in capital prices due to technological progress (which *Dixit/Pindyck* assume to be zero in their calculation) and because the expected change in (real) prices of most telecommunications services is also negative given the decreasing capital prices, I calculate the value of  $m$  to be around 3.2-3.4.<sup>29</sup> Thus, a markup factor must be applied to the investment cost component of TSLRIC to account for the interaction of uncertainty with sunk and irreversible costs of investment.<sup>30</sup> Depending on the ratio of sunk costs to fixed and variable costs the overall markup on TSLRIC will vary, but the markup will be significant given the importance of sunk costs in most telecommunications investments. Note that this same markup over TSLRIC would be used by the hypothetical social planner to choose optimal investment in a telecommunications network since the social planner would face the same inherent economic and technological uncertainty over future demand and cost factors.

Now when the markup for sunk and irreversible investment is applied, it should only be used for assets which are sunk, e.g. potentially stranded. Other investments that are fixed, but not sunk, would not have the markup. I have applied this methodology to links and ports, which are treated as unbundled elements by U.S. regulation. The proportion for sunk costs for links is 0.59 so that the markup factor for the overall investment using a markup factor of  $m = 3.3$  is approximately 2.35 times TSLRIC. By contrast, the proportion of sunk costs for ports is about 0.10 so that the markup factor becomes 1.23 times TSLRIC. The markup over TSLRIC that takes account of sunk costs and uncertainty is the value of the free option that regulators force incumbent providers to grant to new entrants; e.g. 1.35 times TSLRIC for links and 0.23 times TSLRIC for ports. Thus, the proportion of sunk costs has an important effect on the correct value of regulated prices when sunk costs are taken into account.

Regulators, by failing to apply a markup to TSLRIC, will set too low a regulated price for telecommunications services from new investment. The result will be to decrease new investment in telecommunications below economically efficient levels, contrary to the stated purpose of the Tele-

communications Act of 1996 in the U.S. and enabling legislation in other countries. Thus, through its focus on static cost efficiency considerations in setting regulated prices equal to TSLRIC, the regulators will miss the negative effect on dynamic efficiency that TSLRIC-based prices will cause. Since the examples of voice messaging, cellular telephone, and the Internet demonstrate that the dynamic efficiency effects are quite large in telecommunications, use of TSLRIC to set regulated prices will likely cause substantial welfare losses to consumers similar to past FCC regulatory policy in the U.S.

#### IV. Conclusions

Cost based regulation of telecommunications (e.g. rate of return regulation in the U.S.) had significant negative effects on innovation while it was claimed that it led to excessive capital investment. Most economists decided that cost based regulation led to significant consumer harm. During the 1980s price cap regulation replaced cost based regulation in many countries. Price cap regulation has important economic incentive attributes for innovation and investment in telecommunications networks by the incumbent firm.

During the 1990s cost based regulation has reappeared because of the necessity to set price for unbundled network elements sold by incumbent firms to their competitors. Unfortunately, the adoption of TSLRIC as a cost basis to set the prices for unbundled elements has negative economic incentive effects for innovation and for new investment in telecommunications networks. Failure by regulators to recognize the sunk cost character of much network investment leads to the grant of a free option to the competitors of the incumbent. Causing the shareholders of the incumbent firm to fund the free option for the competition will lead to underinvestment. Given the amount of uncertainty in a dynamic industry with rapidly changing technology and economics, use of TSLRIC can have an especially large effect on investment incentives because the value of the option is high. The losers will be consumers and businesses who will not have access to the most up to date service that would be provided if regulatory did not create disincentives to new investment.

29) Because of the expected decrease in the price of capital goods, even if the standard deviation of the underlying stochastic process were 0.25 as high as a typical stock, the markup factor would still be 2.1. For a standard deviation 0.5 as high, the markup factor is 2.4. I have also explored the effect of the finite expected economic lifetimes of the capital investments in telecommunications infrastructure. Using expected lifetimes of 10-15 years leads to only small changes in the option value formulas, e.g. for a project with a 12 year economic life the markup factor of 2.0 changes to 1.9.

30) It is the advent of competition which requires correct regulatory policy to apply the markup. Previously, when regulatory policy did not allow for competition, regulators could (incorrectly) set prices based on historic capital costs. Given the onset of competition arising from the 1996 Telecommunications Act and regulatory removal of barriers to competition, regulators must now account for changes in prices over time. Otherwise, ILECs will decrease their investment below economically efficient levels because their expected returns, adjusted for risk, will be too low to justify the new investment.